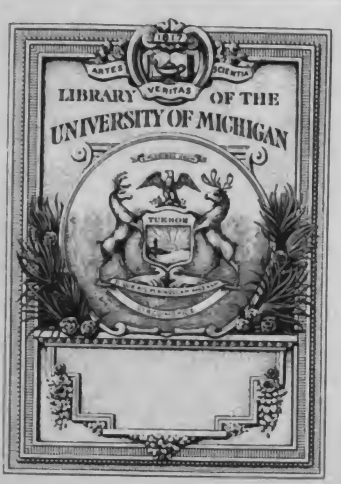
The American colonies in the seventeenth century

Herbert Levi Osgood


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THE AMERICAN COLONIES

IN THE

SEVENTEENTH CENTURY

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THE AMERICAN COLONIES

IN THE

SEVENTEENTH CENTURY

BY

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VOLUME III

IMPERIAL CONTROL. BEGINNINGS OF THE SYSTEM OF ROYAL PROVINCES

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PREFACE

With the publication of the present volume the pledge made three years ago is redeemed, and the treatment of the seventeenth century as contemplated in the plan of this work is completed. The volume will be found to contain both more and less than a history of British colonial administration in America during the period under review. It contains more than this, because an effort has been made to trace the internal development of Virginia during a large part of the century, and special attention has been given to domestic relations in the other royal provinces as in succession they appeared. The history of the royal provinces is more than a history of imperial administration, though the two are closely interwoven; and in tracing it the author should never forget that he is still standing upon American soil. His outlook is broader than it was when he was considering the chartered colonies, but it is not radically different.

The book contains less than a history of British colonial administration, because the island colonies, with Newfoundland and Nova Scotia, are for the most part left out of account. In the opinion of the British merchant and official the island colonies and the northernmost dominions appeared to be the most important. Their affairs received proportionally greater attention than did those of the intermediate continental colonies; their trade was more valuable to Great Britain and came far less directly into competition with British industry than did the trade of the northern colonies. From this comparative estimate proceeded a course of development which had not a little to do with the revolt of the continental colonies and their independence at the end. But though this group of colonies was less thoroughly "administered" than were the islands, yet their experience amply illustrates all the phases of the

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British system of control. In the present volume an attempt has for the first time been made to trace the history of this control as a distinct and separate feature of colonization. Attention has been directed to the organs through which it was exercised, to the objects and ideals which were pursued, and to the obstacles which prevented their attainment. The early stage of development only has been traced; the heart of the subject has been reached. If the inquiry can be pursued through the period of the French wars, and the processes of control as applied to the royal provinces be revealed, a body of precedent will be collected and a point of view attained, in the light of which the events of the colonial revolt will appear in their proper relief.

For valuable suggestions in reference to the commercial policy of England, I am indebted to Mr. George Louis Beer. The preparation of the manuscript for the press has been greatly facilitated by the assistance of my wife.

COLUMBIA UNIVERSITY,
January, 1907.

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PART FOURTH

IMPERIAL CONTROL. BEGINNINGS OF THE SYSTEM OF ROYAL PROVINCES

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CHAPTER I

THE NATURE AND ORGANS OF IMPERIAL CONTROL

In the earlier volumes of this work the results which were achieved mainly through the operation of private initiative in the development of British-American institutions have been traced. That motive, when followed out in action, resulted in the founding of a considerable number of colonies, each with its peculiar grouping of settlers and its characteristic organization; all, as a rule, jealous of the privileges which, by charter or in other ways, they had secured. The part thus played in America by the chartered colonies corresponds to the régime of the privileged commercial companies in the development of English trade. Those were in part joint-stock and in part regulated companies. The companies which shared in American colonization were organized on the joint-stock plan. But the system under which trade was carried on with the chartered colonies in general might be roughly compared with that which was enforced by the English regulated companies. The important fact, however, in this connection is that, when the British government came to enforce such principles of control as it thought conduced to the general interest, it had to deal in both cases — that of the trading companies and that of the American colonies — with bodies possessing chartered powers. In this form mainly both English trade and English colonization were organized throughout the seventeenth century.[1]

In the history of this phase of early American institutions the most significant event was the removal of the governing body of the Massachusetts company into their colony.[2] That

[1] Cunningham, Growth of English Industry and Commerce, Modern Times, 214 *et seq.*

[2] For suggestive remarks on a somewhat analogous development on the part of the Merchant Adventurers of England, see Lingelbach, in Transactions of the Royal Hist. Soc., New Series, XVI. 51 *et seq.*

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gave rise to a type of colony which embodied most clearly the spirit of separation and independence toward which private initiative naturally led. Outside the group of corporate colonies, whose settlement was either directly or indirectly the result of the course which Massachusetts pursued, the same tendency existed, but it was prevented by social and institutional restraints from gaining such complete sway.

In the present volume attention will be called to the influence which was directly exerted over the colonies, and over the proprietors who coöperated in founding them, by the British government; that is, by the sovereign power under whose protection they all came into existence. Under this aspect of the subject the emphasis will be laid on British and general imperial interests, which operated as a restraint upon the tendencies in the colonies toward local independence. In the history of this phase of our colonial development the most significant event, corresponding in importance to the settlement of New England, was the attempted consolidation of the colonies between 1680 and 1690. We shall be concerned with the events that led gradually to that consummation and with some of the after results which permanently affected colonial life. A study of this nature, when properly balanced by a regard to the interests of the colonies as special jurisdictions, will form a proper introduction to the varied struggles and achievements of the eighteenth century.

Historians have hitherto neglected this side of the subject, or have treated it as foreign and inimical to the colonies. It should, however, be remembered that the control of the British government over the North American colonies was not imposed as the result of conquest, but was developed as an incident of their settlement. It was exercised over English subjects or over those who were ready to declare their intention of becoming such. Even the Dutch and Swedes of New Netherland very soon took the oath of allegiance and became reconciled to the establishment of English authority among them. To the colonists such authority was certainly not foreign, though as a result of their removal to a distant

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continent, it became in a sense external. It was a part and a condition of their existence. When properly exercised, this authority did not involve a meddlesome interference, but was as necessary and inevitable as were the tendencies toward isolation and independence in the colonies themselves. Had the colonies not been subject to control in the lines along which sovereign power is accustomed to act, they would not have been dependencies, but something other than that.

From the remoteness of the colonies and the strange environment which surrounded their settlers arose all that was peculiar and exceptional in their relations with the British government. And this in fact was sufficient to account for much. Under favorable circumstances it required four months to send a despatch from London to America and procure a return; often the time required was much longer. This was a natural obstacle to the processes of government which could not be removed and which conditions during the seventeenth and eighteenth centuries did comparatively little to modify. The ordinary proprietor might remove into his province and administer its affairs on the spot. But this the king, whether as proprietor or sovereign, could not do. His residence was always in Europe. From England as a centre, royal or imperial control, whether it was exercised over chartered colonies or royal provinces, must be administered. In other words, the development of imperial control over the British-American colonies affords an illustration of the problems affecting government when it proceeds from a remote centre. This is its main characteristic and suggests the chief distinction between it and the government of the realm, as well as the self government of the colonies. It was this condition which gave rise to the principle, that the laws of England in general should be enforced in the colonies so far as the circumstances of the latter would permit — a qualification which never obtained in the realm.

In modern times dependencies are usually situated in regions far distant from the countries which have established them, and the characteristic just referred to attaches to

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every system of colonial administration. But in the case of many colonial systems, especially in the modern era, it is modified by the other problem, that of the government of alien and inferior races. Questions of this nature become vital and controlling when natives far exceed the European settlers in strength and numbers. Relations with an inferior race formed an element in North American colonization. But, so far especially as the home government was concerned, this feature of the problem occupied a secondary place. Until past the middle of the colonial period Indian relations were a matter with which the colonists concerned themselves much more than did the British government. Its attention was chiefly centred upon the government of Europeans — subjects of Great Britain — when removed to a distant continent and subjected to the influences arising from new surroundings, conditions which tended to attract them away from the mother country. In its last analysis the history of British colonial administration is essentially an exposition of the consequences in the development of institutions of this great natural condition. This explains the failure of policies and institutions to reach a complete and well-rounded development. It also explains much that was peculiarly slow or hesitating in administrative methods; the delays, the indifference, the ignorance with which royal officials were often chargeable; the autocratic and unsympathetic spirit which appeared in much that they said and did; while, on the other hand, the particularism of the colonists sprang from the same source. In other words, it gave rise to the distinction between the realm and the dominions, a phrase which sums up in convenient form the legal and constitutional results of the process.

By the realm was usually meant England, Wales, and Berwick on Tweed. It was the territory whose counties and boroughs were virtually or really represented in parliament, and over which the acts of parliament, whatever their purpose and content, carried full authority. The ordinance power of the English executive, when confined within its proper sphere, was equally authoritative in all parts of this territory, as were the decisions of the central courts. The

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English system of local government also existed throughout this region.

When the colonies were founded, did they become a part of the realm? Did they become a part of it at any period subsequent to their settlement? Was the realm subject to continuous expansion, or did it remain the same, while the colonies lay outside of it? Were they the beginning of a new realm, which in the end might have added a third crown to the royal dignities of the Stuart family? In other words, when the colonies were founded or as they developed, did the English constitution, spontaneously and in complete form, extend to them? Did they become fully subject to the authority of parliament, to that of the king and of the English courts? Did all the laws which guarantied the rights of the crown, and those also which were intended to secure the liberty of the subject, extend to the colonies? Were the colonists bound by the English system of private law, by its criminal law, by the law of procedure in the English courts? Did English law extend to the colonies *proprio vigore*, or were the colonists at liberty to select what they chose or what was adapted to their condition? Was the sovereignty of England over them immediate and complete, or was the relation between the two one of compact? Finally, were the colonies a part of a great consolidated state, or of a federal empire? These were the issues, conceived in the broadest terms, to which the founding of the colonies gave rise, and their origin was due to the peculiar conditions which had their root in colonial isolation.

As in the Saxon period of English history the organs of the central government were imperfect and a satisfactory connection between them and the localities had not been established, so in its relations with the colonies that well-balanced institutional development was never reached which had come into existence throughout the realm long before the close of the middle age. On the other hand, as we have seen, the colonies developed a system of local or self government which was far more complete than anything which existed within the realm. In the eye of the law, however, the corporate colonies ranked only with English municipal

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corporations, while the provinces were the equivalent of English counties. But in reality they had become political structures of a higher rank than their English prototypes, and the colonists were fully aware of the fact. The English counties and boroughs had no assemblies which would rank in importance or authority with those which existed in all the colonies. The proof that this is true has been given in abundant detail in the previous volumes.

On the other hand, the activity of the central government was much less fully exerted in the colonies than it was over the municipalities and counties of the realm. This again was due primarily to the remoteness of the colonies from England. It is true that in the seventeenth century the volume of their business was not large, but it is quite likely that it would have equalled the business of any corresponding number of English counties and municipalities, if Middlesex and London were excepted. But the fact of importance is that, as compared with the English localities, only a small part of the business of the colonies ever came before the English government or was passed in review by its officials. The organs of the English government — its privy council, its treasury and admiralty, the courts of law, and even the parliament — existed for the colonies as truly as they did for the realm ; but the chief part of colonial business was transacted in America, and the volume of such business which passed through English offices was very small as compared with the total business of the realm. This was the consequence, in the domain of administration, of the remoteness of the colonies from England ; and that fact was accompanied with a corresponding degree of indifference toward colonial affairs on the part of British officials and the British public, and toward British affairs on the part of the colonists. Colonial affairs did not receive the direct and intensive treatment which was given to those of the realm.

Just here appears the root of the distinction between the realm and the dominions in that growing political structure which was to be known as the British empire. It was more a distinction of fact than of law, of practice than of principle. But from long-continued practice or custom arise new prin-

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ciples, which in course of time find expression in law. Conduct begets a law which, though it be unwritten, may be more powerful than any code or body of statutes. This was a fact in colonial development which officials were prone to forget, but which they were destined to learn to their cost before the end of the eighteenth century.

British lawyers and officials at home and those who represented the home government in the colonies held that, in law if not in fact, the authority of Great Britain within the dominions was complete. To their minds the relations between the British government and the individual colonists were immediate, and might be made so throughout the entire circle of civil and political relations. They held that the colonies were in principle as completely subject to parliament, as much exposed to the changes which are gradually wrought by the tightening or the loosening of the reins of power, as were the local jurisdictions within England itself. In this they were technically correct and were quite in harmony with the principles of English law. The logical consequence of their reasoning, however, was, to lower the rank of the colonies as political structures to the level of English counties and municipalities. According to this view, if private rights were guarantied, the internal structure of the colonies might be modified by act of parliament, or, under certain circumstances, by executive and judicial action. Without the consent of the inhabitants, the colonies might be subdivided or combined in any way that suited imperial interests. The colonial assemblies even, and the systems of public law to which they gave rise, were held by many to exist by sufferance, and that in the interest of public policy — a very elastic expression — they might be seriously modified or even swept away. If this were true, as doubtless it was in strict point of law, the colonies were virtually a part of the realm, and at the same time, the continuance of what the colonists most valued in their institutions was not adequately guarantied; the realm, in other words, was ever expanding so as to keep pace with the advance of the American frontier.

But opposed to this view was a most important array of facts. These were the remoteness of the colonies from

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England, already referred to, and all the administrative and political consequences which resulted from that physical condition. These facts, when they worked themselves out historically, gave rise to a series of relations between the dominions and the sovereign power in Great Britain which was very much less inclusive and complete than that which existed between the central government and the counties, cities, and boroughs of the realm. Corresponding to this, there developed in the minds of the colonists a higher appreciation of the value of their local institutions, as expressions and guaranties of their liberties, than was felt by Englishmen for their county and municipal systems. The counterpart of this was the sensitiveness which the colonist always felt and expressed when from any quarter his local independence seemed in danger of infringement. By the colonist executive action or legislation at Westminster which was likely to affect his local interests was viewed with much greater jealousy than similar action affecting an English county or borough could have aroused among its inhabitants. To him, because of the remote centre from which it proceeded, such action not only seemed autocratic, but it was so. Even the action of an imperial parliament in which the colonist was not in any real sense represented might be the most autocratic and oppressive of all. The tendency of all this was to keep the dominions very distinct from the realm, and to give rise, not to a consolidated empire, but to a structure, in spirit though not in law, much more analogous to a federation. This tendency did not completely triumph, but it furnishes the key-note to the history of the period, so far as it was determined by purely American conditions.

The fact that these conditions were giving rise in the seventeenth and eighteenth centuries to a novel political structure is to us becoming apparent; but to the men of those times the nature of that structure was by no means clear. The supreme legislature never satisfactorily defined the relation between the home government and the colonies, or settled the questions which were, or might be, at issue. It simply legislated for the colonies on certain subjects by mentioning the dominions in its statutes, and refrained from legislating on a much

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greater variety of other subjects. There was no judicial tribunal in the British system, except possibly the house of Lords, which was competent to pronounce on such questions. The desirability or necessity of such action does not seem to have occurred to the minds of British statesmen, and in fact the system of the elastic constitution, to which alone they were accustomed, almost precluded the possibility of such a suggestion. Respecting the subject there was little positive law.

The political consciousness of the colonists, on the other hand, was scarcely more awake, except that they were usually on the alert to prevent any encroachment on their accustomed liberties. Of constructive thought bearing on the nature of the British imperial constitution they were almost wholly barren. They were accustomed to fall back on the charters, but the provisions in them which appeared to guaranty to the recipients the rights and liberties of Englishmen referred to private rights and were extremely indefinite at that. Charters, moreover, might be modified or annulled, either by act of parliament or by combined judicial and executive action. If done by act of parliament, it was likely to be undertaken in the interest of public policy and thus to be a sweeping measure. Experience was also to prove that similar wide-reaching results could be accomplished in the seventeenth century by the combined action of the courts and the king in council. Before the courts the colonists might be held responsible for acts which under transatlantic conditions they had assumed or found it necessary to perform, but which in the case of an English county or municipality would be clearly illegal or in excess of powers. When charters were once annulled, and the royal province was instituted, with government under a royal commission and instructions, then the colonists came, so to speak, to close quarters with the crown, and the struggle continued over a whole series of claims and privileges and rights. The colonists were then forced to rely wholly on the common birthright of Englishmen, the guaranties which were supposed to have been secured by Magna Carta, the common law, and the great constitutional statutes of the middle age and the period of the Stuarts. But these also were often indefinite in their

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terms, made no mention of the dominions, and were of doubtful applicability to the conditions which existed within them.

Such failure as this to understand and define existing relations left the way open for controversies and misunderstandings between the colonists and the home government or its officials. These controversies form much of the staple of colonial history on its imperial side until, just before the revolt of 1776, they culminated in a general scrutiny of mutual rights and obligations which, so far as immediate imperial reform was concerned, had a purely negative result.

The organs of the British government which were called into play in the administration of imperial control over the colonies were, as has already been suggested, the parliament, the courts of law, and the various executive offices and boards which surrounded the king and constituted what was technically known as the crown. The function of the parliament was, in the form of general statutes, to prescribe the law by which relations with the colonies were to be regulated. As an incident of legislation the houses might receive petitions and hear testimony. They might also call upon officials or executive boards to furnish them with information; they might seek this through their own committees. But the work of the parliament was regulative rather than administrative.

At the beginning of colonization it was possible that parliament might have legislated extensively for the colonies. Several statutes of Elizabeth's reign which provided for the establishment of the English Church and for the security of the crown against the papacy and the Jesuits mentioned the dominions. One or two statutes which were passed for a similar purpose at the time of the Gunpowder Plot, contained the same reference. It was frequently the desire of patentees that their charters should be confirmed by parliament, though it was not often in early times that this favor was secured. On December 19, 1585, a bill from the Commons for the confirmation of the patent to Sir Walter Raleigh was read in the Lords; but there is no reference to its passage and no such statute appears among the acts of that parliament.[1]

[1] Lords Journals, II. 76a. The journal of the Commons is lacking for the years 1580 to 1603.

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It was no uncommon thing in the early days for the parliament to call for patents and to inquire into the use that had been made of the privileges which they conveyed. This was done on a large scale by the Commons between 1621 and 1624 in connection with the attack on monopolies. In April, 1621, a bill was debated at length in the Commons and passed, for free fishing on the American coast from Newfoundland to Virginia. This brought up the affairs both of the Virginia company and the New England Council and led to repeated hearings on the subject of the monopolistic features of the New England patent; Sir Edwin Sandys was a most active defender of the policy of freedom of trade and fishing. The bill failed utterly of consideration by the Lords and so did not become law. Three years later Gorges' patent was again attacked in the Commons and found a place in its list of grievances. But on this occasion no act was passed which directly affected the colonies.[1]

In 1614 the Virginia company petitioned the Commons for an act for the better plantation of their colony, and a hearing was held, at which Richard Martyn appeared as counsel for the company, but with rather humiliating consequences to himself. No legislation came of this.[2] Reference will elsewhere be made to the effort to bring the affairs of the Virginia company before the Commons just before the recall of its charter in 1624. Occasionally after Virginia became a royal province its planters or merchants who traded thither petitioned the Commons, but no action of importance followed.[3] A variety of subjects, to which parliament at times devoted much attention, led far afield and might naturally have involved much legislation affecting the colonies. These were trade, patents, the fisheries, the navy, the customs revenue, war, and defence. During

[1] Commons Journals, I. 218, 223, 578, 591, 640, 668, 688; Lords Journals, III. 340, 451, 459, 487, 526, 823, 827. The famous act of 1624 against monopolies was the result of these debates, but its effects were limited to trade and production within the realm. The bill for liberty of fishing repeatedly passed the Commons and was as often introduced into the Lords, but failed to make progress there. A bill of this kind appeared as late as 1628.

[2] Commons Journals, I. 481, 487; Brown, First Republic, 215, 216.

[3] Commons Journals, II. 54, 64, 818.

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the Interregnum, as will be seen, parliament became the centre of the political organism, and all activity, whether legislative or executive, proceeded from it. But notwithstanding the possibilities which were implied in all this, parliament actually confined her colonial legislation, both before and after the English Revolution, to the subject of trade, passing only an occasional act on other subjects, as on defence during the last intercolonial war.

It is, however, true that both English statute and common law were in a general sense operative in all the colonies. The charters forbade the passage of laws which were repugnant to those of England. The colonists always claimed the benefit of the great English statutes which made for liberty. In many cases they incorporated the substance of them in their own legislation. As Englishmen they were ever under the influence of the legal and administrative traditions of England. Their institutions and laws were based on those of England; its laws were appropriated, both consciously and unconsciously, as the process of development continued. But this, especially during the seventeenth century, was the work of the colonists themselves, and was not effected through pressure from the home government. In the process of natural selection which went on, the colonists took what suited their purposes and modified it as the conditions under which they lived seemed to require.[1]

As to the judge-made law of England, except so far as it had become a part of the common law, it was largely without influence on the colonies in the seventeenth century. In fact, when the colonies were founded, the judges had not established their independence of the executive. In the colonial courts of the time the best judges were imperfectly acquainted with English precedents. In many cases they were totally ignorant respecting them. The dearth of trained lawyers and the lack of a system of appeals made anything more than a rough approximation to English practice an

[1] The subject of the introduction of English law into the colonies, which is also the history of the origin of American law, is one which demands investigation. Until the work shall be done by some competent hand, one is forced to deal in generalities.

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impossibility. The system of appeals from colonial courts was not yet developed, though the admiralty occasionally heard cases which involved vessels engaged in colonial trade.

The executive therefore was the only department of the English government which from the first and throughout the period was directly concerned with the colonies. This arose from the fact that the title to land in the plantations, originating in discovery made under royal license, vested in the crown. The crown issued all charters under which settlements were made. This gave rise to a feudal or pseudo-feudal relation between the king and the grantees. In the case of the provinces this was reproduced by the grants which the proprietors made to the settlers. From this relation, broadened by the fact of sovereignty, proceeded such rights of government as the king possessed over the colonies. These were exercised continuously, and constituted the system of royal control.

The organs of government through which executive control over the colonies was exercised were, besides the sovereign himself, the secretaries of state, the privy council, the lord high treasurer or commissioners of the treasury, the lord high admiral or commissioners of the admiralty, the law officers of the crown and — to be determined by events — either the archbishop of Canterbury or the bishop of London. Committees or commissions subordinate to the privy council, like the commissioners of trade and plantations, and subordinate to the treasury board, like the commissioners of the customs, were subsequently added; but they made no fundamental change. They were mainly boards of inquiry and report, charged with special duties in detail, and when they took positive action it was by virtue of some permanent or special order from the king, privy council, or treasury board. A variety of special commissions were also appropriated from time to time, each for a particular purpose. These are especially prominent in the history of Virginia. Behind all these bodies stood parliament, inactive as yet, but with unlimited possibilities attaching to it as a regulative power.

During the period prior to 1642 the privy council, or

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more properly the king in council, was the body which was chiefly concerned in the administration, both of the affairs of the realm and the dominions. In relation to the dependencies the functions of the council were threefold: 1. it was the chief among the central administrative boards which were concerned with colonial affairs; 2. it acted as a high court of appeal in the trial of cases which were brought from the courts of the colonies; 3. by virtue of a power which it assumed after the royal provinces began to develop, it gave or withheld its assent to acts of the legislatures in nearly all the colonies. It thus became a part of their legislative machinery.

But in the early period, of which we are now speaking, the executive function was almost the only one relating to the colonies which the privy council discharged. In performing these duties it was concerned with all the dealings between the king and the proprietors of colonies, whether corporations or individuals, who were resident in England. From them it received petitions, letters, and reports. In response to all these it originated action in the form of letters, warrants, and orders. Letters from the privy council were or might be written concerning all subjects which came before it. The warrants which it issued were orders to do particular things; as, for example, to draw a patent. They belonged chiefly to the sphere of pure administrative routine.

In the process of investigation hearings were frequently held before the whole council or before a committee. Abundant examples of these forms of action will appear as we proceed, and hundreds more may be culled from the colonial papers. Captain Bargrave petitions, in April, 1622, against the management of Virginia affairs by Sir Thomas Smith. In September, 1630, Aldersey, Cradock, and others of the Massachusetts company petitioned for license for one year to transport provisions to Massachusetts, and that the proclamation of 1622 against disorderly trade be renewed. Both requests were granted. In January, 1634, the attorney general writes that the king may give laws to Newfoundland and submits some which might be temporarily enforced. Sir Ferdinando Gorges, probably in June, 1638, in a letter to the

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council requests that the existing restrictions on emigration to the colonies may be so interpreted as to exclude only schismatics. In October, 1618, a justice of the peace of Somersetshire reports that Owen Evans was causing much fear by impressing maidens, under the pretended authority of a commission, to go to Virginia. The *Discourse of the Old Company*, a memorial of great importance, explaining and defending the policy of the Sandys-Southampton party in the Virginia company, was addressed to the privy council. In February, 1637, the master, wardens, and assistants of Trinity House report on Newfoundland affairs. In May, 1639, the officers of the customs at Yarmouth certify that, since their last, no passengers or goods had been shipped from that port to Massachusetts bay.

Orders were the most common form used by the council for the expression of its will, and they carried with them the highest binding force. Within the sphere of the executive they hold a position of importance corresponding to that of the statute within the province of the legislature. They were, or might be, issued concerning all matters which came within the cognizance of the council. During the controversy between the crown and the Virginia company, and while the government of Virginia was being taken into the hands of the king, orders were issued concerning a variety of subjects connected with Virginia affairs. In 1630 orders were issued relative to a dispute in which Captain Kirke and his associates, merchant adventurers to Canada, and M. de Caen were involved over certain beaver skins to which both laid claim. In 1631 an order was issued referring a controversy, between the same merchant adventurers and certain parties who were charged with trading to Canada as interlopers, to Sergeant Berkeley and two others for further investigation, In December, 1632, a committee was ordered to be appointed to inquire and report how patents for plantations in New England had been granted, concerning the truth of petitions from planters there, and about a relation in writing which Sir Christopher Gardiner had submitted. In 1635 a controversy between Edward Kingswell and Samuel Vassall over the transportation of colonists who were intended for Caro-

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lina, occasioned the issue of orders. Orders were issued in 1640 to the lord treasurer and the officers of the customs for the clearing of several vessels which were bound for New England with passengers and provisions.[1]

In the history which is to follow reference will need to be made with increasing frequency to the doings of the privy council. It was the board to which all general colonial business came and at which it centred. Questions of right and policy were there discussed and settled. The dealings of the council, however, were chiefly with the royal provinces. With those its relations were manifold and continuous. The king in council was the highest depositary of executive power for provinces of that class. During the period of which we are speaking the colonial business transacted by the privy council related chiefly to Virginia. Only occasionally do references appear to the chartered colonies and their concerns. They moved within their own distinct circles, and it required some event of exceptional importance, which affected the king's interest, to bring them before the privy council. This reveals with sufficient clearness the character of the system of chartered colonies, and the significance, from the standpoint of imperial policy, of the transition to a system of royal provinces.

Of the other boards and officials whose share in colonial administration can at a later time be pretty clearly differentiated, prior to the Restoration only occasional traces appear. The secretaries of state had not then become clearly separated from the council. They were still subordinate to it, and in their dealings with the colonies their work appears as a part of its own. The lord treasurer bore a prominent part in the transactions with the Virginia and Somers islands companies affecting the importation of tobacco; but for a long time after the dissolution of the first-named company, the treasury concerned itself little with colonial affairs, except so far as they were affected by the collection in England of the duties on colonial products.

It thus appears that during the early decades the king

[1] The acts above referred to, and many more in addition, appear in Colonial Papers, 1574–1660. The Calendars of State Papers, Colonial, will be cited in this form.

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alone, or the king in council, did nearly all of the colonial business. It was small in amount, and was not thought to demand the degree of expert attention which was afterward devoted to it. Of the executive functions which were performed at the beginning the granting of a royal charter was among the most important. It also best illustrates the co-operation of the different officers connected with the English executive in a matter of business which affected the colonies.

When a petition was presented by private adventurers, or a would-be proprietor, for a royal patent, the proposal was referred to the attorney general and solicitor general for an opinion on the legal aspects of the application. At any time before the creation of a special committee, council, or board of trade, the bearings of the proposition on the political and commercial interests of England must needs have been considered by the council, either in full session or with the aid of a special committee. When a decision had been reached that the grant would probably be both legal and expedient, the law officers were ordered, by a warrant under the sign manual, to draft the patent. When this was done, it was reported back to the council under the name of the king's bill, with a docket attached which was intended for the king's own eye, and which therefore briefly summarized the main provisions or object of the grant. If the terms of the grant were approved, a transcript of it under the king's privy signet was sent to the office of the lord privy seal. There the formal parts of the charter were added, and the privy seal was attached. Thence it was sent to the office of the lord chancellor, where, if no further objection appeared, the great seal was affixed. This completed the grant and made the charter a letter patent.[1] The object of the process thus outlined was to protect the rights and interests of the king, to prevent either himself or his officials from being deceived and from granting franchises which they had no

[1] Palgrave, in Second Report of Deputy Keeper of the Public Records; Charles Deane, Forms used in Issuing Letters Patent, in Proceedings of Mass. Hist. Soc. 1869–1870, 168; Anson, Law and Custom of the Constitution, II. 45.

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right to grant, or those the grant of which would be inexpedient.

It is true that, throughout the seventeenth and eighteenth centuries, a very large part of colonial business was done by the men who at the same time were administering the affairs of the realm. It was done too in the offices where the business of the realm was transacted, and occupied its modest place in the general stream of affairs. Especially was this true when the privy council took immediate charge of colonial administration. But on two or three occasions a tendency appears to assign colonial business to a council specially erected for the purpose, to a body which was given large powers of initiative and one upon which no express obligation of reporting to the king in council was imposed. It would be unsafe to attribute too great independence to any of these bodies, but one interesting example is the king's council for Virginia, for which provision was made in the charter of 1606. It was given not only very complete jurisdiction over the two colonies which were founded on the American coast between the thirty-fourth and forty-fifth degrees of north latitude, but over the entire vast tract as well and over any and all colonies which should be founded within it.[1] It was not required to report to the privy council. Not any of its members were privy councillors. This certainly suggests the possibility that colonial affairs might have been intrusted to a body distinct from the privy council, and that they might have been organized quite by themselves.

But too great a weight should not be attributed to the omission from a charter or commission of express reference to an obligation to report before the privy council. The king might take business of that kind into his hand at any time, and such action meant that it would come before the council. Moreover, all the appointees on the king's council for Virginia were members either of the London or Plymouth companies. If the creation of something resembling a council of the Indies had been contemplated, it is hardly supposable that its personnel would have been selected from so narrow a

[1] Brown, Genesis, I. 56, 66.

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circle. It has very much the appearance of a device the purpose of which was to guard the interests of the king within those companies. That in fact was all the council ever accomplished, for when, in 1609, the London company was reorganized and the Plymouth patentees became inactive, the council disappeared. In general, whatever boards of commissioners, or committees, or subordinate councils existed, it is certain that the relations between colonial patentees and the king in council were direct.

Under any system where the administration of government from a remote centre becomes necessary, agents must sometimes be despatched for the purpose of procuring or giving information or contributing to the settlement of disputes. Results can often be more satisfactorily attained in this way than by means of ordinary correspondence. In the British system this gave rise to the royal commission and the colonial agency, which were the complements the one of the other. Commissions were from time to time sent to the colonies by the crown, while the term "agency" was applied to individuals who were sent for similar purposes to England by the dependencies. Commissions were resorted to at intervals and in times of crisis. In a special sense such appointees represented the authority of the king. In addition to procuring information they were often given limited executive or judicial powers, to be used in the settlement of disputes within a colony, between neighboring colonies, or between a colony or colonies and the home government. In early times colonial agents also were sent occasionally and on special errands. But, as relations became developed and established, they were more frequently employed. In the case of royal provinces they were quite regularly appointed from the first, and as the royal provinces developed into a system, the agencies became a regular feature of colonial administration.

The effect of the creation of special jurisdictions, like the chartered colonies, was to interpose grantees, with their groups of officials, between the crown and those of its subjects who had gone to live in the colonies. That was a most significant result of the settlement of the colonies and of their remoteness from England. Englishmen who, while they remained in the

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realm, were immediately subject to the control of the executive in all its branches and to all acts of parliament, by removal across sea escaped from those relations and instead became subject to colonial proprietors, with their legislatures and officials. Behind and above all these were the sovereign rights of crown and parliament, but the relation in which the colonist now stood to these bodies was no longer immediate, but mediate. Between the two the proprietors and their officials, or the general court with the elected officials of the corporate colonies, had been interposed. This, in the realm of administrative organization, was the result which followed from the settlement of the colonies on a remote continent under the impulse of private initiative. An essentially feudal relation had been created, with a large measure of practical immunity.

But from the first the need of conserving imperial rights was felt; and, as the dominions grew and the rivalry of other competing motives developed, the strength of this feeling increased. Considerations of national wealth and power, as emphasized by the mercantilist theories of the time, enforced the need. It became apparent first and chiefly in the spheres of war and international trade. Out of these general conditions arose the imperialist views of the later seventeenth century, the chief exponents of which were merchants, lawyers, and crown officials. They insisted upon guarding the interests of England in her colonies and upon subjecting them as a whole to a consistent and far-reaching policy. But under the system of chartered colonies the administrative machinery for accomplishing this was lacking. Without a corps of royal officials resident in the colonies it would be useless to attempt to overcome their particularism, or to establish systematic control over them. The elected officials of the corporate colonies and the appointees of the proprietors were almost equally useless for such a purpose. Not a single royal appointee was resident in any of the chartered colonies. In the face of such a situation and for the attainment of genuine imperial objects the English government was as helpless as would be the human body without arms or hands. These it must secure by the addition of royal officials —

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partly in the place of those of the colonies — and by establishing as far as possible an immediate relation between the crown and the colonists.

This change was effected by the substitution of a system of royal provinces for the chartered colonies which had come into existence at the beginning. Its effect, when viewed from the administrative standpoint, was to create in each province a corps of royal officials, who received their appointment and instructions, not from any proprietor or body of colonists, but directly from the crown. These, when the system was fully developed, were the governor, the councillors, the secretary, the surveyor general, the attorney general, the chief justice, customs officials, and, if regular troops were stationed in the province, officers of the army and navy. By means of these officials land was granted, justice administered, the militia organized and commanded, revenue collected and its expenditure to an extent controlled. In the royal provinces also the tendency was for the English Church either to be established or to be favored by law.

These conditions, even though they were not fully realized, gave the king greater strength in the royal province than was possible under the chartered colony. For purposes of imperial administration it was better adapted than any other form of colonial government. It had all the advantages of the proprietorship, with the additional characteristic that the king in this case was proprietor as well as sovereign.

The transition was effected in part by causes operative within the colonies themselves, and in part by pressure from the home government. The nature of the former has been sufficiently indicated in the earlier volumes of this work. The changes there referred to appeared chiefly in the proprietary provinces, and were the result of a struggle between the colonial executives and the lower houses of the legislatures, the houses which were in a special sense representative of the people. Against not a few phases of proprietary government, when at its best, the people were always protesting. In the corporate colonies also a change of sentiment came about among classes and localities which inclined them more favorably to the advances of the home

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government. Tendencies of this kind facilitated the transition to the system of royal provinces. But it is not with this phase of the transition that we are now concerned. Instead of further considering the internal causes which operated to bring in the system of royal provinces, the attention of the reader will be directed to those which proceeded from the home government. We have to do in this division of the subject with the beginnings of imperial control over the North American colonies, and its development and maintenance was the essential function of the sovereign power in the founding of the British empire.

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CHAPTER II

THE DISSOLUTION OF THE VIRGINIA COMPANY OF LONDON

To the royal officials who were seeking to establish or maintain control over colonial affairs, the place of residence of those who received proprietary grants was a matter of great moment. Both judicial and administrative control could be much more easily exercised over a corporation or proprietors resident within the realm than it could over those resident on a distant continent. The form under which land, and especially trade, was managed was also of some importance. The government first came into prominent and significant relations with the Virginia company and the New England Council. Both were corporations located within the realm, but at the same time proprietors of provinces. Because located within the realm they were subject to the same regulation and interference, both from king and parliament, as that to which corporations generally were liable. The experience of the Virginia company, together with the little we at present know concerning other companies at that time, would lead to the inference that the tinkering came more from the executive than from the legislature. The present chapter will be devoted to a discussion of the relations between the crown and the Virginia company, as an illustration of British colonial policy in its earliest phase. It will be observed that the transactions occurred chiefly between the king and the company, and not between the king and the colonists. The latter were affected indirectly and through the fate of the company. So long as the work of colonization was in the hands of corporations resident in England, this was necessarily the form which the exercise of royal control assumed.

It is true that during the early years of the Virginia enterprise, while the colony existed under the charter of 1606, as well as later, the activity of the king and his ministers was

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enlisted to prevent Spain from ascertaining the location of the new colony, and from attacking or destroying it.[1] This was effected through diplomatic delays and avoidance, so far as possible, both of discussion of the enterprise and of the assumption of direct responsibility for it, while at the same time friendly relations were maintained with Spain. All the time, however, with the knowledge and often with the direct assistance of the government, the patentees were striving to so establish their colony and strengthen their hold on Virginia that Spain could not dislodge them. It was a quiet but persistent struggle to nullify, so far as eastern North America was concerned, the provisions of the papal bull. The protection which in indirect ways the government afforded, contributed toward the successful result. While the government was serving the interests of the colony in the diplomatic sphere, its directive influence was doubtless exerted upon the company itself; but, owing to the dearth of records, the history of its activity during the administration of Sir Thomas Smith cannot be traced. By the time the Sandys-Southampton party came into control, Virginia and the Somers islands had become large producers of tobacco. That made them important, both from the commercial and the fiscal points of view. The fact that the majority of the officials and active shareholders of these companies were not in sympathy with the court, introduced a political element into the situation. These conditions, when taken together, occasioned the persistent and hostile interference of the king with the affairs of the company, which finally resulted in its dissolution.

The attitude of the king toward the company under its new management was first shown in connection with the election of treasurer in 1620. When Sandys's term of office had closed and he had submitted his report on the work of the year, a message[2] was received from the king signifying

[1] The proofs of this are in Brown, Genesis of the United States, I.

[2] Records of the Virginia Company, I. 348, 357–358. The references throughout this chapter are to the new edition of the Court Book of the Company, which has recently been published by the Library of Congress, under the editorship of Miss Susan M. Kingsbury

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his pleasure that the company should choose as its treasurer one of four men named by himself, Sir Thomas Smith, Sir Thomas Roe, Alderman Robert Johnson, Maurice Abbot. This was an application to the company of the *congé d'elire*, the instrument by which the Tudors had humbled the cathedral chapters and annulled their rights of election, and apparently its object was to prevent the reëlection of Sandys, who was leader of the country party in the house of Commons, or the choice of any offensive member of the opposition. The company was brought to a strait by this message. After much debate they voted to adjourn the election till the next quarter court, and appointed a committee, headed by the Earl of Southampton, to petition the king that he would not deprive the company of the right of free election to which by charter it was entitled.

At the next quarter court Southampton reported that the king had said he did not intend to limit their choice to the names he had mentioned, but simply to recommend them as desirable candidates. Also he said it was necessary to have as treasurer one who could freely approach the royal person. The company thereupon[1] chose the Earl of Southampton treasurer, with John Ferrar as deputy. This, while intended to meet some of the objections of the king, also insured the continuance of the same methods of administration as those which Sandys had followed; and, indeed, his influence when out of office continued to be almost as great as it had been when he held the treasurership.

In 1622 the king once more presented candidates for treasurer, and for deputy as well.[2] But they were again passed over, Southampton and Ferrar being reëlected. A committee headed by Lord William Cavendish was then sent to explain this conduct to the king. His majesty seemed not well satisfied that, out of the ten candidates whom he had named, not one had been chosen. He expressed the opinion that merchants were fittest for the government of the company, and instanced Sir Thomas Smith as one by whom the production of staple commodities had been begun, while now the colony exported only cotton. Lord Cavendish replied, though

[1] Records of the Va. Co. I. 384. [2] *Ibid.* II. 28, 34–35.

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with the same sort of exaggeration which the king had shown, that the introduction of tobacco and neglect of staples had been the work of the Smith and Johnson administration. Since that time the company had labored to erect iron mills, plant vineyards, produce silk and a variety of other commodities. They hoped to give his majesty proof of this ere long. Since the time of Smith the colony had grown to almost as many thousands, as it then had hundreds, of people. With an expenditure of £10,000 more had been accomplished than by Smith with £80,000. In the same strain Sandys wrote to the Duke of Buckingham and asked for the help of the favorite, in promoting the cause of the company at court. Thus stood relations when tobacco became an important subject of negotiation with the king.

In those early days of its history the feeling that tobacco was a noxious, or at least a useless, product was stronger and more widespread in England than it is at present. The attitude of James I toward the weed is well known from the "counter-blast" which he directed against it. The attitude of Charles I was not very different. English statesmen of the time always deprecated the fact that the Virginians devoted so much of their labor to the raising of tobacco, and spoke with regret or protest against a plantation being founded so largely on smoke. In the many royal proclamations which were issued concerning the tobacco culture the same opinions were expressed. As late as 1637 the privy council wrote that the king expected some better fruit than tobacco to be returned from Virginia. During a debate in the house of Commons in 1621 on the subject of tobacco there was a general and spontaneous outburst of feeling against the weed. Member after member inveighed against it as "vile," and an object of their abhorrence, and insisted that it should be entirely excluded from the realm. Resort, they declared, should be had to something else for the support of colonists in Virginia. But tobacco was already a source of revenue which could not easily be spared. It was also raised in England and Ireland and used for medicinal purposes. Merchants were interested in its transportation and sale and colonists in its production. An increasing

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proportion of the people, at home and abroad, were becoming its consumers. The Spanish product of superior quality commanded a high price in the market. Interests had gathered about the product which insured the continuance of its use on a large scale, and for a long time to come it received a large share of that attention which the English government was able to give to the colonies in general. It appears that Spanish tobacco, which was of superior quality, was the first to recommend itself to the English market. Later came the product from the English colonies — Virginia and the Somers islands — followed by that from Barbadoes and the Leeward islands, from Maryland and North Carolina. By 1619 both the Virginia and Somers islands companies had begun to import considerable quantities of tobacco, of poor or medium quality, into England. At the same time it was being raised as a garden product or even on a somewhat larger scale within the realm. Here was a new industry, the fiscal possibilities of which were attractive; but its moral and other social tendencies were viewed with suspicion. With it were involved interests in the colonies and in the realm, while it affected foreign relations as well. Conditions such as these called imperatively for regulation, especially with a government which was controlled by the traditions of the early seventeenth century. In 1619 two royal proclamations were issued providing that no tobacco should be sold in England until the custom and impost on it was paid and until it was officially inspected and sealed.[1] The duty at the time on tobacco of the quality which came from Virginia was 6*d.* per pound. As Virginia tobacco was then selling for about 5*s.* per pound, the duty was the equivalent of an ad valorem rate of about ten per cent. The sealing of the tobacco, which was referred to in the proclamation, implied a guaranty of its quality. This was arrived at by the process of separating the good from the poor quality, which was then known as "garbling." It occasioned an additional impost which, at the time of which we are speaking, whether just or not, was fixed at 6*d.* per pound. The total

[1] Rymer, Foedera, XVII. 191. References to proclamations of May 25 and November 10, 1619.

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impost, then, on Virginia tobacco was 12*d.* per pound. But there was a clause in the charter of the Virginia company (1609) which exempted them from the payment of any duty in excess of five per cent on commodities which they should import into the realm or the colonies.[1] It also provided that on the payment of this duty they might freely reëxport their products from England to foreign markets. These provisions, of course, would not avail against an act of parliament, and by the government at the time were evidently regarded as inferior in validity to orders in council and such other administrative acts as, under the Tudors and early Stuarts, gave rise to the book of rates or customs tariff.

In the summer of 1619 the Virginia company had its first encounter with the government on the subject of tobacco. Abraham Jacob was then a farmer of the customs. He refused to permit the delivery of a cargo which had recently come from Virginia unless the impost, above referred to, of 12*d.* per pound was paid. The officers of the company urged as a plea against this demand the provision of their charter, and petitioned the treasury board.[2] This resulted in the despatch of a letter from the privy council to Jacob instructing him to deliver the goods, the adventurers even offering to leave one-half the cargo with him if they might offer the rest for sale and thus save it from perishing. But Jacob, who was later called by Sandys a "tough adversary," refused to do this, unless the company brought him a full discharge from the council, which it could not then procure. Hence the goods were detained for more than four months, and at an estimated damage to the company of £2500. The Somers islands company had been treated in the same way, though the period during which it was exempted by charter from imposts had not elapsed. Because of these acts a petition was sent by the Virginia company directly to the privy council. This resulted in a hearing, at which the attorney general declared that the company was free by its

[1] Similar clauses appear in the early charters of other colonizing companies, including that of the Somers islands company. The five per cent rate which was named was an ancient customs duty.

[2] Recs. of Va. Co. I. 245, 258, 291.

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patent from the imposition. The council now ordered Jacob to deliver the tobacco, the company paying only the duty to which it was legally subject.

Shortly after came a suggestion from the king that the company should farm the impost on tobacco, but continue to pay the 12*d.* duty, that is to say, 3*d.* as provided by the charter, and 9*d.* additional for five years in consideration of the issue of a royal order that no more tobacco should be raised in the realm.[1] On December 30 a proclamation prohibiting the industry at home was issued.

Thus was initiated a course of action which was to be maintained by the British government during most or all of the century. Though in its early stages this policy was probably the outgrowth of moral considerations, it soon came to be regarded in the light of a partial compensation for the various restrictions which were laid on the tobacco industry of the colonies. But the government found it an extremely difficult, if not an impossible, task to enforce this regulation. This is proven by the long series of proclamations on the subject which were issued during this and the succeeding reign. In the spring of 1620 the company learned that tobacco was again being planted in the realm, and plead for a mitigation of the impost,[2] but this does not appear to have been secured. The continuance of that part of it which was popularly known as a "garbling duty" was insured by a proclamation of April 2, 1620, designating a commission of eight members, who should prepare rules for "distinguishing of the aforesaid Drug . . ., whereby the Goodness or Badness of the said tobacco may be discerned." It was provided that when such rules were perfected and enrolled in the chancery, they should be duly enforced.[3]

By a proclamation of June 20, 1620, "for restraint of disordered trading in tobacco," provision was made not only for the enforcement of the earlier orders against the raising of the weed in England, but that no one who was not authorized

[1] Recs. of Va. Co. I. 290, 292. The proclamation is referred to in Rymer, XVII. 233. It is calendared in the 4th Report of Hist. Mss. Com. Pt. I, p. 299.

[2] Recs. of Va. Co. I. 316, 321, 327, 339, 342.

[3] Rymer, XVII. 191 *et seq.* On garbling see also Recs. of Va. Co. II. 60.

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by patent so to do should import any tobacco into the realm. With this act the policy was inaugurated of bestowing on private parties the monopoly of the importation of the commodity for limited periods. This was in full harmony with the administrative methods of the time, and a patent for one year was granted to Sir Thomas Roe, Abraham Jacob, and others, they paying the king a rent of £10,000 for the privilege. All tobacco which was legally imported was commanded to be sealed, in order to distinguish it from that which was smuggled. None whatever should be sold which was not sealed, and full powers of search and seizure,[1] under general warrants with writs of assistance, were given the customs officers as an aid in enforcing the proclamation. The Virginia and Somers islands companies could now import tobacco only in such quantities as the latter chose to admit. As the result of an application to the king, the two companies were permitted by the undertakers to import and sell in the realm during the year 55,000 pounds of tobacco. As this was about the amount which the Somers islands company alone could import, and since the production and sale of tobacco was its only resource, the Virginia company resolved for the coming year to vacate the field in the interest of the sister company, and to bring no tobacco to the English market. It arranged, instead, to dispose of its product on the Continent, and to make Middleburg[2] in the Netherlands its port of entry and sale. A factor was appointed to act as agent for the company at that place, and when, in July, 1621, the magazine ship *Bona Nova* returned from Virginia loaded with 40,000 or 50,000 pounds of tobacco, the master was ordered to depart at once for Middleburg and deliver the cargo to the factor and consignees. A part of this cargo had been shipped on the account of the subscribers to the old magazine and a part belonged to the magazine of 1620.

But this plan the company found it impossible to execute, for it violated what, under the influence of mercantilist con-

[1] Recs. of Va. Co. I. 139, 141, 406; II. 68; Rymer, XVII, 233. There are entries relating to this in the Privy Council Register, under dates beginning on April 5, 1620.

[2] Recs. of Va. Co. I. 406, 504, 525.

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ceptions, were understood to be the interests of England. These indicated that a colonial product so valuable as tobacco should be landed wholly in the realm. Presently complaint[1] was made to the privy council that the company was setting up a trade in the Netherlands and was transporting its commodities thither. An inquiry was at once sent by the board to the company to know whether it proposed to continue this trade or not. A court was called, and "after much dispute and many reasons given of the impossybillyty of beinge bound to bring in all their comodities into England without fallinge into great inconvenyencies," an answer was prepared and sent to the council. In this the company claimed that the restraints to which it was subjected were greater than those imposed on the Muscovy company or on any other corporation; that several of the patents which it had granted in Virginia contained clauses guarantying freedom of trade with other nations, a privilege which the company itself had previously enjoyed; that the company did not feel itself empowered to limit the trading privileges of private planters or to prescribe the business for about a thousand adventurers who were resident in England. A direct trade, they said, had also arisen between Virginia and Ireland, by which the colony was being supplied with cattle and other necessities, and this would be destroyed by the regulations which had been suggested. The claim to freedom of trade in general was urged by the company. But the council was imperative, and on October 24, 1621,[2] an order was issued forbidding the export of any Virginia commodities to foreign parts until they had been landed in England and had paid the duties there. This order was repeated in March, 1623, thus clearly revealing the fact, even at this early date, that it was the intention of the government to make the ports of the realm the staple ports for colonial trade. The two companies thus became subject to the stint and to the conditions established by the contractors or monopolists who were recognized by the government, among which was a garbling duty. For the year 1622

[1] Recs. of Va. Co. I. 526.

[2] *Ibid.* I. 528, 530–532, 537; II. 322–323; Col. Papers, 1574–1660, p. 26.

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Jacob received the monopoly[1] of importation, and the companies were ordered to bring in all their tobacco subject to his privileges. But as a partial compensation the crown prohibited the planting of tobacco within the realm, and in return for this favor the companies consented to the doubling of their duties for five years.

But soon plans were under discussion which were intended to transfer the monopoly that Jacob held to the companies themselves. "The variety of crosses," said Sandys later,[2] "advised them to listen to the making of some settled contract with his Majesty, as well for his Majesty's profit, as for the benefit of the plantations, thereby to exclude new practices of the same or other new projectors." Thus some of the principal members of the companies conceived the idea of a contract with the crown. It was discussed by Sir Arthur Ingram and Sir Edwin Sandys with Lord Treasurer Middlesex. The lord treasurer had long been a member of the Virginia company and one of its councillors, and it was probably by him that the suggestion was brought before the privy council. Middlesex in preliminary discussions[3] with Sir Arthur Ingram and Sir Edwin Sandys suggested that a contract should be arranged according to which the London and Somers islands companies should take the place of the existing patentees and themselves enjoy the monopoly of the importation of tobacco into the realm and Ireland. In this way they would have full control of their commodity, and, judging from the large bonuses which recent monopolists had paid, Middlesex thought that the companies could afford to pay a considerable rent to the crown. At his request Sandys and Ingram considered what terms the companies could afford to make, and concluded that they could pay the king one-fourth of the tobacco imported. The lord treasurer, however, thought that, in view of the large sale of tobacco and its price, a proper grant to the king would be a third, while in addition the existing rates of duty — 6*d.* per pound for roll tobacco and 4*d.* for leaf — must be paid.

[1] Recs. of Va. Co. I. 442; II. 67.

[2] *Ibid.* II. 176. See a somewhat different account in Discourse of the Old Company, Va. Mag. of Hist. I. 290 *et seq.* [3] *Ibid.* II. 35 *et seq.*

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The lord treasurer's proposition was submitted by Sandys to the two companies and it was by them entertained. Committees were appointed to further consider it. The first proposition[1] of the companies was that, in return for the grant of the sole right of importation for seven years, they would pay the king £20,000 per annum. This they estimated would be the value of one-fourth of the commodity imported. That should go directly to the king, and if it yielded less than the amount named, the difference should be made good by the companies. They would also pay the duty of 6*d.* per pound for roll tobacco and 4d. per pound for leaf, as specified in the book of rates, but they asked that this be fixed by computation at an average sum. Owing to the superior quality of Spanish tobacco and to the demand for it in England, coupled also with the strong Spanish influence at court, a concession in favor of that product was made by the companies. The amount of Spanish tobacco which should be annually imported was fixed at not more than 60,000, nor less than 40,000 pounds, provided the prices at which it was being sold in Spain were not increased, and that the market for tobacco were left as free there as formerly it was.[2] Of the importation and sale of Spanish tobacco, of the disposition of the product of private planters in Virginia as well as their own product, officers appointed by the companies should have exclusive control. Expenses should be charged proportionately upon the king's share and that of the companies. Finally, the king was asked to limit by proclamation both the wholesale and retail prices of the commodity and to forbid the planting of tobacco both in England and Ireland. After considerable discussion, as a result of which the companies abandoned their insistence on the issue of a proclamation fixing the prices of tobacco in England, and unwillingly accepted a clause which required them to import during the first three years 80,000 pounds of the best Varina tobacco or be answerable to the king for

[1] *Ibid.* II. 58.

[2] At this time, though Spanish tobacco sold for much higher prices than Virginia tobacco, the duties on it were the same. That inequality was later remedied.

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every pound that was lacking, the contract seemed to have been reduced to a form which was satisfactory to the government. The contract was to continue for seven years.[1]

When this point had been reached, a committee which had been appointed for the purpose reported on the administrative organization that was necessary for executing the contract. It recommended that a director of the enterprise should be appointed, and that associated with him should be a deputy, a treasurer, and a committee. A bookkeeper, a solicitor, an husband, and a beadle should be appointed, while the appointment of two cashiers and a clerk was to be left to the treasurer. The officers were all to be salaried, and for the sake of economy it was suggested that for the first year the same individual might perform the duties of both deputy and treasurer.[2] It was estimated that the total salary list would be about £2500 per annum. The report of the committee met with the general approval of both companies, the opinion being held that the business could not be well managed with a smaller number of officials or at much less cost. Sandys was therefore chosen director and John Ferrar deputy, though both men sought on various pleas to excuse themselves. Had this plan been carried into execution, its administrative relation to the company would apparently have been like that which was borne by the later magazines, to which reference has been made in an earlier volume.

At this point the case against ex-governor Argall,[3] a protégé of the Earl of Warwick, to which extended refer-

[1] The contract in a form most closely approaching that which it finally assumed is in Recs. of Va. Co. II. 85. Later debates and emendations appear, *ibid.* 97, 121, 138–140, 147–148.

[2] For list of the lower officials, with their salaries, see *ibid.* II. 149–151. See also pp. 144 and 145. On p. 268 is a good description by Sandys of the burdensome duties which would fall upon a director in that business. The discussions over this matter occupy much of the second volume of the records.

[3] See edition of Recs. of the Co. in Colls. of Va. Hist. Soc. II. 29–48, which is a compilation of entries under various dates during the years 1620–1622, to be found in the new edition of the Records.

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ence has been made in the first volume of this work, came up for final decision by the company. Sandys led in the prosecution of Argall and formulated the charges against him with his usual ability. Opinion among the members of the company ran strongly against the ex-governor, and the verdict of his court-martial against Edward Brewster was declared unlawful and of no validity.[1] A committee was also appointed to examine his accounts. When the case had proceeded thus far, Samuel Wrote, a cousin of the Earl of Middlesex, but one who had hitherto been a respected member of the company and was now in its council, burst forth in severe denunciation of its management.[2] This was directed against Sandys, Southampton, and Ferrar, and what some jealously regarded as their overweening influence. Some began to say that members were prevented from speaking their minds, and that measures were carried with a high hand. One of the chief points also against which Wrote inveighed was the salaries which it was proposed to pay the officials who had been appointed to manage the tobacco monopoly. He charged that they were extravagant in amount, and that this, like other matters, had been too exclusively under the management of Sandys. When Wrote after a stormy meeting of the council had not only refused to withdraw his utterances, but continued his insolent bearing, especially toward the Earl of Southampton, and after for a time he had absented himself from meetings of the council and committees, he was suspended from the company. His conduct throughout was such as to indicate that he was the mouthpiece of a faction which was forming against the existing management. It soon appeared that the king and lord treasurer were interesting themselves in Wrote's charges,[3] that they were perhaps watching the discussions with a view to the possibility of utilizing them as an excuse for again interfering in the internal affairs of the company. The friends of Sir Thomas Smith and Alderman Johnson were ready to avail

[1] *Ibid.* 42, 46. [2] New edition of the Records, II. 163 *et seq.*

[3] See the statements of Sir Henry Mildmay made at a preparative court, held February 3, 1623, Recs. II. 216–248, 252; also Discourse of the Old Company, Va. Mag. of Hist. I. 292.

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themselves of this as a means of recovering control of the company or of destroying it.

There is evidence that almost from the start the administration of Sandys and Southampton had been viewed with aversion. Those whom it had supplanted would naturally so regard it. The knighting of Yeardley, who stood near to Sandys, greatly offended Sir Thomas Smith in 1619, and some other members of the company are said to have felt bitterly toward the governor. Sandys wrote, in September, 1619, that he had to meet much malignity in connection with accounting, before which he believed he would have quailed if it had not been for the support of the Earl of Southampton. As we know from his own statement, expenditures under the management of Sandys and his associates were most liberal. Large numbers of colonists were sent to Virginia, and the scale on which business was managed by the company was enlarged upon with pride by Sandys and the Ferrars in all their statements. But this had its unfavorable and dangerous tendency. Yeardley, in the summer of 1620, warned Sandys not to send over colonists faster than they could be cared for, not to undertake works greater than Virginia could bear. Mortality among settlers, he said, was great, and at times they were in danger of famine. There is some evidence, though of course it does not appear in the formal records of the company, that their heavy expenditures involved its managers in some financial embarrassment. This fact helped to give currency to many exaggerated or false statements by enemies of Sandys and the Ferrars. They charged that the resources of the company were being wasted by the wholesale ; that one Gabriel Barber, whom Sandys is said to have employed as a secretary, was deeply involved in this ; that incriminating letters had been destroyed and false entries made. It was also said that Sandys and the Ferrars owned little or no land in Virginia, and thus had no stake in the colony which they were recklessly mismanaging. Wrote is mentioned as among those who were circulating these complaints. The fact seems to be that the charges were being used to an extent by the Smith-Warwick faction at the time when the question of expenditures under the tobacco

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contract came up, and even when Wrote launched his accusations publicly against the management.[1]

An immediate consequence of Wrote's outburst was that a proposition, emanating from him and his friends, for the reduction of the salary list proposed for the officials who were to administer the tobacco monopoly, was submitted to the companies and debated at length.[2] It was claimed that the companies themselves by means of extraordinary courts could perform the functions of a director. A merchant could be appointed treasurer at a salary of £100. The salaries of others might be fixed at lower rates, and in this way it was estimated that £1300 per year might be saved to the two companies. In the very interesting debates upon these proposals Sandys and his friends, supported by nearly all the members who were in attendance, argued that it was impossible to secure good service, of the difficult and responsible nature that was required, for less than the specified sum. The proposition to substitute courts or a board for a single director was condemned as not only a departure from the practice of other companies and joint stocks, but as bad policy in itself. Sir Edwin Sandys[3] said, "that in a body consisting of many members, which must all concur in one action, there must be by necessity of nature and reason one head to contain and direct them unto unity, that to make this one head two courts, to be assembled upon every needful occasion, was a thing not only repugnant to the celerity of despatch, but also of insupportable toil both to the Governor, Council, and Company." A case was also cited from the experience of the Somers islands company, where a question, which had passed two ordinary courts, had been much debated in a preparative court, and concluded in a greater court, because of the demand of one man who had not been present, had to be again read and argued.

[1] The authority for the above statements is to be found in letters of Sandys and Yeardley in the Ferrar Papers, and in material contained in copies of some of the Manchester Papers; all of which, in manuscript form, is now in the Library of Congress. The evidence, as marshalled by Sir Nathaniel Rich, is in Eighth Report of Hist. Mss. Comm. App. Pt. II.

[2] Recs. of Va. Co. II. 225 *et seq.* [3] *Ibid.* 229.

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Upon the question, whether or not £100 was a sufficient salary for the treasurer of the tobacco monopoly, it was stated that it was not safe to commit stock to one who would accept the office for so small a salary, and that he must give security for heavy money transfers. The experience of the East India company was cited to the effect that it had just paid a salary ranging from £300 to £500 to its treasurer.

After all the proposals of Wrote and his friends on preliminary debate had been most carefully examined, weighed, and rejected by overwhelming adverse votes, in a joint meeting[1] of the two companies the contract, as signed for seven years by the lord treasurer and approved[2] by the privy council, was submitted and accepted. Then the question of salaries was taken up for final settlement. Several of the opponents of the scheme sought to stave this off by declaring that they were not ready for debate. Southampton marvelled at this, inasmuch as they had begun the trouble. Sandys, who had now resigned the directorship, spoke his mind, setting forth the heavy duties of a director in such an enterprise, and stating that two men instead of one were needed. Sir Nathaniel Rich and Alderman Johnson then presented some more objections which, though indirectly relating to salaries, concerned directly the division of expense between the two companies. These were all termed generalities by the majority and rejected.

Thereupon an effort was made to induce some one to take the place of director. Sir Nathaniel Rich, Sir Thomas Wroth, Edward Johnson,[3] were offered the place, but all professed themselves unequal to it. It was then voted not to accept Sandys's resignation, and he was earnestly entreated not to retire, as such a course was likely to prove fatal to the enterprise. Deputy Ferrar then presented a plan,[4] which was carefully worked out in every detail, for the care of the tobacco after it arrived in port and while it was on sale, the object being to prevent smuggling and losses of all kinds to the company, and to secure just returns to each private planter

[1] Recs. of Va. Co. II. 264 *et seq.*

[2] The order in council approving the contract was dated Feb. 2, 1623. Colonial Papers, 1574–1660, p. 37.

[3] Recs. of Va. Co. 272.

[4] *Ibid.* 281 *et seq.*

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whose crop was imported and sold under the auspices of the company. This involved the difficult problem of fixing prices, and it was resolved that in this, as in all other matters which concerned the contract, the two companies must act jointly and that nothing should be determined without the joint consent of both.

At this juncture the malcontents complained to the king and council of alleged dissensions and suppression of free discussion in the Virginia company.[1] Wrote and Bing were put forward for this purpose, while Sir Nathaniel Rich enlarged upon the injustice of granting so large a proportion of the tobacco to the king. The king at once took advantage of this to state that, in consideration of the license for lotteries and of many other favors which he had done for the company, contract or no contract, the company ought to bring all their commodities into the king's dominions, so that they might pay custom there. The opposers were elated by this, and Wrote stated that a petition from Virginia in favor of the policy to which the king referred had been suppressed by Deputy Ferrar. The truth, however, was that the petition[2] contained simply an appeal from the colonists for liberty to send their tobacco to England, that product having at the time been excluded from English ports by royal proclamation.

But the evil was done. The privy council summoned representatives of both parties in both companies to appear before it and settle the tobacco business. At the hearing which followed, and which was numerously attended, Lord Cavendish, treasurer of the Somers island company, was chief spokesman for the two companies. Bing made a long and violent speech against the contract, alleging oppression in the passing of it, and using such insulting language about the Earl of Southampton as to call forth a severe rebuke from the lords of the council, and to result in his subsequent imprisonment.[3] The most that he could make out was, that the rank

[1] *Ibid.* II. 297, 302 *et seq.* A discussion of these points at length will be found in the Relation of the late proceedings of the Virginia and Somers Islands Companies, *ibid.* 352 *et seq.* See also Discourse of the Old Company.

[2] *Ibid.* 308. [3] Colonial Papers, July 25, 1624.

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of Southampton and his associates had overawed some of the generality, and that an expression of Southampton to the effect that they must accept the contract or do worse had been misinterpreted. The point was also raised that the contract would be injurious to the plantation; but to this the company had a ready answer, that it had accepted the contract not as perfect, but as the best that could be had.

Though the lords of the council seemed to have been favorably impressed by the representations of the company, they renewed the demand that all the products of the colonies should be brought to England, and seemed still to feel offended because, a year and a half before, an attempt had been made to carry some of them to the Netherlands. On March 4, 1623,[1] this sentiment found decisive expression in the renewal of the order of October 24, 1621, that all Virginia commodities should be landed first in England. This was at once interpreted as the work of the "opposers," and Sandys was set about the preparation of a reply to the council.[2] In this he argued that the Virginia company was engaged not merely in trade, but in colonization as well, and, as a result of its work as a colonizer, a large number of private planters had settled in Virginia. They enjoyed freedom of production and trade and should continue to do so. Over their industry the company had no control. Many of the commodities which they produced, like fish, caviar, pipe staves, sassafras, salt, "and the meaner quality of tobacco, would not be salable at any saving price" in England, but might be somewhat profitably marketed elsewhere. The ships which went to Virginia usually made profitable indirect voyages. A remunerative trade had sprung up between Ireland and Virginia, whereby the colony secured cattle and other necessaries cheaply, and paid for them in tobacco. If the policy of the order in council was followed, all these profitable lines of trade would be ruined. But Sandys's paper did not occasion a recall of the order in council, while the order itself indicated that the tobacco contract was being abandoned by the government. Indeed a

[1] Recs. of Va. Co. II. 321. [2] *Ibid.* 323, 325.

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proposal was now somewhat debated to allow free importation of tobacco from all quarters, a policy which Sandys at once denounced as sure to so depress the price as to ruin the tobacco industry in the colonies. At this juncture, however, the subject of tobacco in general was lost sight of in the discussion of other questions that directly concerned the relations, as a whole, which existed between the company and its province.

In April, 1623, Alderman Johnson, as a representative of the opposition within the company, presented a petition[1] to the king, in which he contrasted the prosperity of Virginia under the administration of Sir Thomas Smith with the alleged discord, abuses, and lack of proportionate returns under the existing management. He asked that a commission under the great seal be appointed to inquire into the condition of the colony when Smith's administration closed, including the expenditures and abuses which had arisen since that time; and to recommend such changes in the government of Virginia as would bring contentions to an end, punish the authors of evil, and best secure the prosperity of the undertaking. The commission was immediately appointed,[2] with Sir William Jones, a justice of common pleas, at its head. This body was ordered to inquire into the past business transactions of the company, to find out what moneys it had received or collected, and how they had been spent. With special care it should inquire after alleged misuse of private parties, to the loss or injury either of the company or the plantation. They were to ascertain what orders or laws had been made which were inconsistent with the charters; of what misgovernment the company had been guilty, and what injury adventurers had suffered in consequence of it. If unnecessary hindrances to trade within Virginia existed, these were to be investigated. The commission was finally to ascertain by what means contentions

[1] Recs. of Va. Co. II. 346, 373; Neill, Virginia Company, 387.

[2] Colonial Papers, 1574–1660, 44, 52; Ms. Recs. of Va., Bland Copy, 126; Brown, First Republic, 520 *et seq.* Jones served until the following October, when by reason of other employment (presumably on the bench) he was excused. But the commission was ordered to continue its inquiry.

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might be stopped, and both the business affairs and government of Virginia improved. In the performance of this duty the commission was given power to send for persons and papers and to examine under oath. It was to report to the privy council.

The companies were also ordered to write a general letter to the colonists, exhorting them to live together in concord, and no private letters referring at all to dissensions were to be sent. The privy council was also to write to both plantations, assuring them of the king's solicitude and of his purpose to make better provision for them. By an order in council of April 28, the letters of the companies were disallowed because they failed to certify the king's grace and favor to the plantations. The tobacco contract was by the same order dissolved. The company was told to bring all its tobacco to England, and 3*d.* in the pound was abated from the customs. But as Spanish tobacco was also freely admitted, the company found it far from possible to market all their products.[1]

In the spring of 1622, more than a year before the occurrence of the events just related, the hatred with which Opechancanough and his followers had always regarded the English had culminated in a massacre[2] of the inhabitants of the upper settlements of Virginia. Three hundred and forty-seven had perished, among them being six councillors, George Thorpe, deputy of the college lands, John Berkeley, master of the iron works, and others upon whom depended the execution of the company's cherished plans. Jamestown and the lower settlements were saved by a timely revelation of the plot, for which the English were indebted to a converted Indian. The massacre greatly reduced the productive power of the colony, and disappointed to an extent the hopes of the company for a steadily increasing return. It also contributed to increase the complications in which the company was becoming involved at home.

Soon after the massacre Captain Nathaniel Butler, who had been governor of the Somers islands, but had been forced

[1] Col. Papers, April 28, 1623; Recs. of Va. Co. II. 367–369, 540; Discourse of the Old Company.

[2] See Waterhouse's Relation, Neill, 318.

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to leave them in order to avoid examination into certain misdemeanors which he was charged with committing while in office, came to Virginia.[1] He found the province depressed and suffering from the effects of the massacre. Collecting all the unfavorable characteristics of the climate, soil, and settlements, as he saw them, he set them forth in a dismal picture of the province, which was circulated on his return to England under the title of "The Unmasked Face of our Colony in Virginia, as it was in the Winter of the year 1622."[2] He found the plantations seated in unhealthy places, the settlements unprovided with wharves where landings could be safely effected, no inn where newcomers could find entertainment, food scarce and high, sickness prevalent, the dwellings no better than the meanest cottages in England, no fortification, and not a serviceable piece of ordnance in the province. In government the colonists had wilfully strayed from the law and customs of England. So great was the mortality among the inhabitants, arising from abuses and neglect, from the self-seeking of some of the company, and the poor administration of their agents in Virginia, that unless the evils were "redressed with speed by some divine and supreme hand, instead of a plantation it will get the name of a slaughter-house, and so justly become both odious to ourselves and contemptible to all the world." This was the conclusion to which Captain Butler came after dwelling on all the unfavorable aspects of Virginia life and excluding everything which indicated improvement. That there was much truth in Butler's account is proven from other sources. Several of the company's plans for establishing new industries had been wrecked by the massacre or by adverse natural conditions. Sickness was still prevalent, and Jamestown was in an unhealthy location. Sandys and the Ferrars had never visited Virginia, and their plans were in some respects unpractical. But many of the defects to which Butler called attention were unavoidable, and their presence in Virginia is traceable long after the dissolution of the company. His

[1] This is the account given of him in the Recs. of Va. Co. II. 400 *et seq.*

[2] *Ibid.* 374 *et seq.*; Neill, 395.

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statement, however, served the purpose of the clique which was striving to manufacture a case against the company, and for a time it played an important part in their agitation.

To the charges preferred by Alderman Johnson, as well as the pamphlet of Captain Butler, the company made several replies.[1] For this purpose its active members resolved themselves into a large committee, and this held frequent sessions. The documents were formulated chiefly by Sandys and the two Ferrars, and set forth not only the just and able management of affairs within the company itself, but the progress which had attended its policy in the colony since the retirement of Sir Thomas Smith. A statement was procured from the colonists themselves that proved the exaggeration in the assertions which Butler had made. "A Declaration made by the council . . . of their Judgments touching one original great cause of the dissentions in the Companies and present oppositions,"[2] is a specially suggestive statement of what the company believed to have been the personal and political motives which gave rise to the attack upon it.[3] It represents the Earl of Warwick as the prime mover, and his friend Argall, with Sir Nathaniel Rich, Johnson, Pory, — the late secretary of Virginia, — and the rest, as his supporters or instruments in the work. Their purpose was alleged to be either to control the company or ruin it. So sharp was the arraignment of the Earl and his party in this that Warwick procured an order by which Cavendish, Sandys, and the two Ferrars were confined for a time to their houses.[4] Southampton may also have received the same treatment. An attempt was made to attract Nicholas Ferrar away from the service of the company by the offer of a clerkship to the council, or the position of envoy to the court of Savoy, but these he declined.

[1] Recs. of Va. Co. II. 352, 381, 393, 397, 400. [2] *Ibid.* 400.

[3] What the leaders of the Sandys party thought somewhat later of the statements contained in Butler's attack, may be seen in the Discourse of the Old Company, Va. Mag. of Hist. I. 295.

[4] Brown, First Republic, 522, 525–526, 529, 542, 557; Peckford, Life of Nicholas Ferrar, 132; Recs. of Va. Co. II. 433; Colonial Papers, 1574–1660, 45, 46.

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The later career of the Earl of Warwick indicated that personal rather than political motives were at the foundation of his quarrel with Sandys.

The company soon found that its most important powers had passed to the council and the royal commission, and that it was left with the task of defending itself against charges and executing a few orders of the commission. Conditions similar to those which existed under the charter of 1606 had returned. Not only had the privy council taken charge of all correspondence with the colony, but the king ordered[1] that all complaints against the company should be submitted to the commissioners, so that controversies should no longer occur in its courts. He also ordered the election[2] of officers to be postponed and those who were already in office were continued until April, 1624, when the company held its last election. Reports of lack of food arriving from the colony, the council directed the company to supply what was necessary, and a sum was raised by subscription for the purpose.[3] The royal commissioners instituted a prolonged investigation, examining the company's papers and hearing witnesses. Their sessions were often held at the house of Sir Thomas Smith. The report which they made, while moderate in tone, was less favorable to the contentions of the company than to those of its opponents, and confirmed the king in his resolve to change the government of the colony.[4] Captain John Harvey, John Pory, Abraham Peirsey, and Captain Samuel Mathews, men who were later described by Sandys and his friends as "certayne obscure persons" "found out by the Earl of Middlesex," were appointed as commissioners to Virginia and instructed to report fully on its condition. This was probably the first royal commission ever sent to an English colony in America.

The really decisive blow against the company was struck on October 8, 1623.[5] The deputy (Nicholas Ferrar) and several members of the company were called before the privy

[1] Recs. of Va. Co. II. 434. [2] *Ibid.* 451, 531, 535. [3] *Ibid.* 458 *et seq.*

[4] Colonial Papers, 1574–1660, 53, 54; Brown, First Republic, 541–549.

[5] Recs. of Va. Co. 469 *et seq.*; Colonial Papers, 1574–1660, 51, 52; Brown, First Republic, 550 *et seq.*

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council and told that the king had resolved, by a new charter, to appoint a governor and twelve assistants to be resident in England, to whom, in subordination to the privy council, he would commit the government of the colony and company. Provision was also made for the appointment by the king of a governor and assistants for the colony on nomination by the superior board in England. The company was ordered to assemble and resolve whether it would surrender its former charters and accept a new one with the changes just described. It was a measure which probably originated in political motives, though they might be veiled under the phrase "considerations of public policy," and its effect would be to leave the patentees with the trading privileges which they had under the charter of 1606 and nothing more. But a decision must be promptly reached, as the king had determined, in case the submission was not forthcoming, "to proceed for the recalling of the said former charters in such sort as shall be just." This course of action was adopted in accordance with advice which had been given by the law officers of the crown more than two months before.[1]

It is not surprising that when this command was read in an ordinary court of the company, and even after it had been read three several times, "the Company seemed amazed at the proposition, so as no man spake thereunto for a long time." Finally the members who were present were roused from their stupor by the statement of the deputy that an answer was expected by the council on the following Friday. After considering that important business like this could be transacted only in a quarter court, they resolved to petition the council for respite until the order could be submitted to the entire company. A call was at the same time issued for a quarter court to meet on the 19th of November. But the king would not allow the decision to be postponed until that time, and called[2] for a final answer on the 20th of October. Thereupon, at a meeting attended by almost seventy members of the company, it was resolved,

[1] Colonial Papers, July 31, 1623.

[2] Recs. of Va. Co. II. 473; Colonial Papers, 1574–1660, 53; Brown, 553 *et seq.*

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with only nine dissenting votes, not to surrender the charter. Within a brief time after this reply was received from the company, *quo warranto* proceedings were instituted by Attorney General Coventry before the King's Bench. Early in November an information was served on the company.[1]

As was customary in such cases, both the information and the reply of the company were formal. They recited the powers which had been bestowed by charter. The information closed with the statement that these liberties had been usurped to the damage and prejudice of the king and the great contempt of the sovereign, and with the demand that the patentees show by what warrant they were using the same. The prayer of the company in its reply was that the suit might be dismissed, since they had never used or claimed other privileges than those to which they were legally entitled by the charter.

The members who were in attendance when the writ was read immediately resolved to stand suit. When the quarter court met, on November 19, the course pursued by the ordinary and preparative courts which had preceded it was submitted and approved, and a grand committee was chosen to take charge of the defence of the company's interests before the King's Bench. A resolution that the expenses of the suit be paid from the general funds of the company was met by a petition from Alderman Johnson to the privy council, that the charges be borne by those members who opposed the surrender of the charter, and to that end that all goods and public stock of the company which should be imported be sequestered at the custom house for the general uses of the plantation. To this, however, the council refused to assent.

In March, 1624, the royal commissioners, having reached Virginia, asked the governor and assembly to give them information concerning the defences of the colony, its relations with the Indians, and its prospects in general. After reply had been made to these inquiries,[2] the commissioners

[1] Colonial Papers, 1574–1660, 54; Records of Va. Co. I. 184; II. 478.

[2] See Va. Mag. of Hist. VII. 135, for the punishment of Edward Sharpless, acting secretary of the colony, for delivering papers of the governor, council, and burgesses to the commissioners without authority so to do.

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presented a form which they wished the members of the assembly to subscribe. It expressed gratitude to the king for his care of the colony and willingness that the old charter should be revoked and a new one given. The governor and assembly replied that they conceived the resolve of the king to change the government proceeded from misinformation, which they hoped might be removed. They would consent to the surrender of the patent when required so to do by the proper authorities. They also wished to know whether the commissioners were authorized to demand that the declaration which had been presented should be subscribed. The commissioners confessed that they had no such authority, but made the proposal "by way of counsel for the good of the plantation." In a letter to the privy council the governor and assembly said that they saw no prospect of ruin if government by the company was continued. They had no accusation to bring against those who had managed it since Sir Thomas Smith's time. The slavery they then suffered had since been converted into freedom. Had it not been for the massacre, there would have been no reason to complain of the condition of the colony. But if they were to be placed under the immediate control of the crown, they begged that the assembly might be retained. In July, 1624, a long[1] petition was sent by Governor Wyatt and the assembly to the king, in which the evils suffered by the colonists during the administration of Sir Thomas Smith were fully set forth and contrasted with the freedom and prosperity which, it was claimed, had succeeded it. They prayed, that if the government was to be changed, they might not fall into the hands of Sir Thomas Smith or his confidants.

These utterances conclusively proved, if such proof was necessary, that the administration of the province under Sandys and Southampton had been satisfactory to the ruling body of the colonists, and that Johnson and his friends could get no comfort from that quarter. But this made no difference with the result, for, when the plans of the government were matured, the commissioners were ordered

[1] Col. Papers, 1574–1660, 65–68.

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to return the papers of the company, the pretence of an investigation ceased, and the case was prepared for trial before the King's Bench.

While the company was struggling with the English executive for existence, the parliament which impeached Lord Treasurer Middlesex and passed the act against monopolies was in session. It was believed that the house of Commons could be induced to actively support the cause of the company, a cause which had so much in common with its own. For this reason Nicholas Ferrar, in April, 1624, drafted a petition[1] for a hearing before the house, which, when approved by the company, was sent to the Commons. It was received and a select committee was appointed to sit in the Star Chamber and hear testimony bearing on the company's case. Preparation was made for a full presentation of facts and arguments by representatives of the company, and such as would bear with special weight against Middlesex and Sir Nathaniel Rich. But when the king heard that the Commons were about to investigate the charges, he forbade them to proceed,[2] saying that such matters were the special business of the council. The house yielded, though with expressions of discontent, and thus ended one of the earliest efforts to draw parliament actively into the work of colonial administration.

Judgment was rendered in the suit against the company by Sir James Ley, Chief Justice of King's Bench, in Trinity Term (May and June), 1624. It was to the effect that the plea of Nicholas Ferrar and the attorneys of the company was not sufficient to preclude the king from declaring that their privileges had been usurped. They were judged to have been convicted of said usurpation and — in the words of the decree — the "said privileges taken and seized into the hands of the king and the said N. Ferrar and others shall not intermeddle but from use and claim of the same

[1] Col. Papers, 60–62; and Recs. of Va. Co. II. 526, 528, 537; Neill, 415. Captain John Bargrave also petitioned the Commons about the abuses of Sir Thomas Smith's administration. The petition was heard before the committee of grievances, and a reply was presented by Smith and Johnson.

[2] State Papers, Dom. May 6, 1624.

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shall be excluded. . . ."[1] So far as the judgment and other entries on the record indicate, no attempt was made by the presentation of evidence on either side to prove or disprove the allegations of the government. The judgment simply rehearses the *pro forma* charges in the information and pronounces them sufficient to justify the forfeiture of the franchise. The impression given is that the king was so sure of his case and of his judge that more than this was not deemed necessary.

The effect of an adverse judgment under a writ of *quo warranto* was not to cancel the charter, but to restore the liberties which existed under it into the hands of the king.[2] This is probably the reason why the charter does not appear as cancelled or vacated on the Patent Roll.[3] Under that condition it was quite possible that the patent might again be granted with such modifications as should appear wise to the king and his advisers. A result such as this was regarded by both parties at the time as possible. The supporters of Sandys and the Ferrars desired that the new grant should be modelled on the old — but with the removal of its imperfections — and that it should be confirmed by act of parliament. As will appear, the discussion of a possible reissue of the charter was prolonged well into the next period; but the decisive step was never taken, and Virginia passed the remainder of its existence as a colony under the forms of a royal province. Although, because of its place of residence, the dissolution of the Virginia company was

[1] Coram Rege Roll, Court of King's Bench, No. 1528, 21st James I, Michaelmas Term. For the communication of the record of the *quo warranto* proceedings I am indebted to Miss Susan M. Kingsbury, who discovered the document in the Public Record Office in London.

[2] Argument of Sawyer, in case of King *vs.* City of London, Howell, State Trials, VIII. 1147 *et seq.*; Kyd, On Corporations, II. 407.

[3] Brown, First Republic, 603. In one of the papers accompanying Claiborne's Petition, Md. Archives, Council Proceedings, 1667–1688, 176, is a statement that "for manie years after noe Judgment [was] entered and to this time [1676] not vacated upon the Record in the office of the Rolls, whereby some that sought to overthrow the Lord Baltimore's Patent for Maryland in the beginning of Parliament in Anno 1640 took out the Virginia Pattent againe under the broad seale of England." Of the truth of the last improbable statement there is no proof which at present is available.

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more closely connected with English than American history, yet it marked the first step in that long process by which the crown continued to resume the authority over colonization which at the outset it had granted to individuals or corporations. In the event itself we may well consider that the company was treated summarily and with scant justice. But the process of development which was begun by its dissolution was a natural one, though it marked the end of the romantic period of Virginia history and removed from connection with that province some of the most attractive personalities who ever interested themselves in American colonization.

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CHAPTER III

RELATIONS BETWEEN THE ENGLISH GOVERNMENT AND MASSACHUSETTS PRIOR TO THE BEGINNING OF THE GREAT CIVIL WAR

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It is clear that the dissolution of the Virginia company was in large measure the result of the attitude of political opposition which those who directed its affairs between 1619 and 1624 maintained toward the king. It was a minor phase in the great struggle which was then in progress between the Stuarts, with their autocratic ideals, and the growing body of Englishmen who looked to an invigorated parliament for an assertion of the ancient liberties of the nation and the maintenance of a system of guarantied rights. Puritanism contributed much toward the growth of that national sentiment which expressed itself in the demands of the parliamentarians, but very many who were not Puritans in the technical sense gave evidence of possessing their spirit and contributed greatly toward the strength of the common movement. Such men were Sir Edwin Sandys and the Ferrars, with others also who shared their labors and plans in the councils of the Virginia company. The sympathy between that company and the Puritans who settled Plymouth and Massachusetts is clearly evident, and their enterprises, though amid great diversity, sprang from motives which were in some ways related.

But if the leaders in the Virginia company had shown irritation, combined with tendencies toward independence and self government, the Massachusetts company and colony had exhibited all these in a much higher degree. Massachusetts, by its very organization, to say nothing of the spirit by which it was animated, had practically declared independence at the very outset. It boldly made its challenge and awaited the result. If James I had found it necessary to restrain the ambitions of parliamentarians in the Virginia company, it would

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seem inevitable that Charles I should presently inquire into the use which men who in fact were already Puritan dissenters were making of the charter which he had granted them. But as these patentees had removed with their charter into their American colony and were themselves directly administering its affairs, the issue must naturally be taken on questions which were more purely colonial than those that arose between the king and the Virginia company. This must be a controversy between the king and men who were actively colonists, residents in America, and not with English noblemen and merchants who were interested in colonization. Pressure, therefore, must be applied under somewhat different conditions in the one case from those which existed in the other.

The theories held by the Stuarts concerning government naturally led them to favor, at least ostensibly, a system of strong executive control over the colonies. Such was the policy of James I, while Charles I, at the beginning of his reign, made formal announcement that he should follow a similar course not only in reference to Virginia, but toward the other colonies as well. "Our full resolution is," he declared in the proclamation[1] of May 13, 1625, concerning Virginia, "that there may be one uniform Course of Government in and through all our whole Monarchie; That the Government of the Collonie of Virginia shall immediately depend upon Ourself, and not be commytted to anie Company, or Corporation, to whome it may be proper to trust Matters of Trade and Commerce, but cannot be fitt or safe to communicate the ordering of State Affairs be they of never soe meane Consequence."

Had the policy thus outlined been consistently pursued, corporations would never again have been intrusted with powers of government. It is possible that proprietary grants might have been made; but the strictly logical outcome of the policy would have been a system of royal provinces. Virginia had now reached the form which best suited the purposes of the English executive. The king had thus early expressed his preference for that form, and all his successors, together with the officials who served them, expressed their

[1] Rymer, Foedera, XVIII.; Hazard, Hist. Colls. I. 204.

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substantial agreement with him in that preference. But, as we know, the policy dictated by that view was far from being followed. And indeed it could not be followed, for individual initiative and resources were indispensable to the founding of colonies, while court favoritism accounts for the rest. Within four years after the Stuart monarch had proclaimed his dislike of colonial corporations, he created one on the petition of men who, though relatively obscure, were his determined political opponents, and this was to have a more remarkable career than any similar body in that century. Three years later he gave away to one who had been a favorite minister a principality, and that almost without express condition. The same policy was followed on a much larger scale by his son during the twenty or more years which followed the Restoration.

But underneath and behind these exhibitions of royal favor and proofs of court influence which followed one another in such long succession, appears the tendency which was set forth in the royal proclamation of May, 1625. It was the tendency toward the maintenance of strict executive control over the colonies, through officials of royal appointment and directed by a policy which had primary, though not exclusive, reference to the interests of the mother country. It had first manifested itself in the relations between James I. and Virginia. Its second manifestation arose from the desire of the English officials to correct the error which, when viewed from their standpoint, seemed to have been made by the ill-considered grant of Massachusetts.

The consequences of that grant and of the use which had been made of it by the removal of the governing body of the Massachusetts company into the colony, were gradually revealed to the authorities in England. The territorial claims of the Gorges family and of John Mason had been infringed by the grant, though in its original form the patent had been issued by the New England council. The grant which had been made to Robert Gorges had been wholly included within its bounds, as was also a part of the territory called Mariana for which Mason had procured an indenture from the council. Years after Sir Ferdinando Gorges wrote in his

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Briefe Narration[1] that, when the Earl of Warwick, who on this, as on other occasions, acted as patron of the Puritans of Massachusetts and Plymouth, requested his consent to the issue of the patent to Sir Henry Roswell and his associates, he gave it, "so far forth as it might not be prejudiciall" to the interests of his son, Robert Gorges. But, whatever may have been the cause, those interests were in no way regarded. In these conflicting territorial claims, as well as in the antagonism between Anglican and Puritan, loyalist and parliamentarian, originated the controversy between Massachusetts and the Gorges-Mason interests both in England and New England. Gorges had sufficient influence, though it was prudently exercised, to materially advance at court not only his own cause, but that of other complainants than himself. Such complainants, some of them in fact malcontents, were not slow in appearing.

In describing the earliest essays of the Massachusetts magistrates in the administration of criminal justice, reference was made to the cases of Thomas Morton and Philip Ratcliff. Both were sent back to England, the latter suffering a punishment of great severity in the colony. Ratcliff's offence was angry denunciation of the magistrates and church at Salem. Morton, though his sentence recited only certain trivial offences which he was charged with having committed toward the Indians, was really banished because he was regarded as an incongruous element within the colony, one who would never adapt himself to a Puritan environment. Previous to the arrival of Winthrop and his colonists, Morton had trafficked in firearms with the Indians, and had refused to submit to the rules of the company. Both he and the settlement with which he was connected had been disorderly.

The case of Sir Christopher Gardiner, the third individual against whom the magistrates felt it necessary to protect themselves and the colony, was different. He was a widely[2]

[1] Baxter, Gorges, II. 51, 59.

[2] Winthrop, Journal, I. 65, 68; Dudley's Letter to the Countess of Lincoln, in Young's Chronicles of Massachusetts, 333; Bradford, History Plymouth Plantation, Edition of 1899, 352; Adams, Three Episodes of Massachusetts History, 251.

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travelled man of some culture, possibly also of high connection, certainly of loose morals, who appeared in Massachusetts in 1630, about a month before the arrival of Winthrop. He brought with him a servant or two, and a "comely yonge woman," whom he called his cousin, but who was thought to be his mistress. At first he seemed to intend a permanent residence in the colony, and even offered to join one of its churches. He built a dwelling of some kind, probably on the Neponset, south of Boston, and may have lived there for a brief time. But presently information came that he already had two wives whom he had deserted in Europe, and both of whom, though for opposite reasons, were seeking to ascertain his whereabouts. Letters from both these women reached Governor Winthrop, and on the strength of the charges of bigamy, desertion, theft, and general ill living which they contained, the court at Boston ordered Gardiner's arrest and deportation to England by a ship which was about to sail. But he, hearing in advance of their intent, escaped alone into the forest, where, in the neighborhood of Taunton river, he wandered about for nearly a month, when he was captured by the Indians and brought to Plymouth. Thence he was taken back to Massachusetts. His companion, Mary Grove, had in the meantime been examined by the magistrates, but little information of importance had been elicited from her. Though for a time after his return Gardiner was kept under close watch, there was no intention of treating him with severity.

In June, 1631, a boat from Piscataqua brought, under cover to Winthrop, a package of letters addressed to Sir Christopher Gardiner. Acting as guardian of the community and following the practices of the times in the same way as Bradford had done in the case of Rev. John Lyford at Plymouth, Winthrop opened the letters. They were from Sir Ferdinando Gorges, and were addressed to Gardiner as his agent. A letter from Gorges to Morton was also in the package. By both these letters it appeared that Gorges "had some secret design to recover his pretended right" to the soil of Massachusetts. The errand on which Gardiner had come to New England was now revealed. He was the

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agent of Sir Ferdinando Gorges. It would therefore naturally occur to the governor that to send such a person back to England, would be playing into the hands of the enemies of Massachusetts. Probably for that reason he was treated with courtesy so long as he remained in the colony, and at his departure was "dismissed in peace." From Massachusetts he accompanied Mary Grove and Thomas Purchase, to whom she had recently been married, to their home near the modern Brunswick, Maine. There Gardiner remained for about a year and then returned to England.

Morton, Ratcliff, and Gardiner were now in England, armed with complaints against Massachusetts, and ready to coöperate with Gorges and Mason in efforts to procure the recall of its charter. The severity of Massachusetts had sent two of them thither, and of the two Morton's representations in particular were sure to enlist the support of the active members of the New England council.

On December 19, 1632, Gardiner, Morton, and Ratcliff, supported by Gorges and Mason, petitioned[1] the king in council. The petition has been lost, but we are told that it contained many charges against Massachusetts. The leaders of the colony were accused of having renounced allegiance to England and of an intention to rebel. It was affirmed that they had separated from both the laws and Church of England, and that the ministers and people continually railed against the government, church, and bishops of the mother country. We may also suppose that the harsh usage to which the petitioners had been subjected in the colony was referred to. The petition was evidently an indictment of the main features of Massachusetts policy, stated in harsh and exaggerated terms and intended to convey the impression that the policy was wholly illegal, that it was leading to disorder and would end in rebellion. It was the first, but by no means the last, manifesto of this kind the influence of which upon the king and council Massachusetts was forced, if possible, to counteract. To do this proved to be easy in this case, though as time went on it came to be different. The difficulty arose

[1] Bradford, 355; Hutchinson Papers, Prince Society, I. 57; Winthrop, I. 119, 122, 126, 127.

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from the fact that the charges against Massachusetts, though exaggerated, contained a considerable element of truth. It could with truth be stated that independency both in church and state, though in a somewhat disguised form, was the ideal of the leaders; that, so far as they dared, and by all means in their power they would contend for this and defend it if ever it should be really attacked.

The petition was followed by a hearing before a committee of the privy council. Emanuel Downing,[1] a brother-in-law of Governor Winthrop, Captain Thomas Wiggin of Piscataqua, members of the company, and friends of Massachusetts, some of whom had recently returned from the colony, appeared in its defence, and for the time the efforts of Gorges and his associates were defeated. Most of the charges were denied, and others, it was found, could not be proven except by witnesses from the colony itself. A reply to the charges of the petitioners concerning the attitude of Massachusetts toward the English Church was prepared and sent by the governor and assistants, but it must have arrived too late to affect the decision. It was also found that various enterprises which the adventurers had in hand, involving the despatch of colonists, food, and merchandise to America, would be defeated if the colony now fell under suspicion. For these reasons the council declared that, appearances being so fair and hopes so great, the adventurers might rest assured, if the terms of the charter and the purposes expressed at the time it was granted were fulfilled, the king would not only maintain their privileges but add what might further tend to the good government and prosperity of the colonists. The king was reported to have said that he would have those punished who abused the governor and plantation. So

[1] Letters from Downing to Secretary Coke, in the Coke Papers (12th Report of the British Hist. Mss. Comm. App. Pt. I. Vol. II. pp. 38, 64), show that he was not only defending Massachusetts against the territorial claim of Gorges, but against the charge that it would renounce its allegiance to England and engage in trade with foreigners. He suggested that their patent be enlarged a little to the north, where the best furs and timber were, and in the spirit with which he warned the government against the earliest encroachments of the Dutch on English trade anticipated the attitude of his son, George Downing, a generation later.

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gratified were the authorities of Massachusetts when they heard of the result, that Winthrop, through the governor of Plymouth, asked that colony to join in a day of thanksgiving for a merciful deliverance "out of so desperate a danger."[1]

With the rejection of this petition Sir Christopher Gardiner disappears from view. Ratcliff at a later time gave testimony again before the council. Morton continued, however, to be an active and persistent foe of Massachusetts and aided its enemies in their plans whenever it was possible. As the period of personal government on which Charles I had entered progressed, it was accompanied with the more general and stringent execution of Laud's policy of repressing dissent. His appointment as archbishop in 1633, combined with the elevation of Neile to the see of York, made certain the triumph of that policy for the time being. The realization of this fact by the Puritans was followed by their emigration in large numbers to New England. The population of Massachusetts rapidly increased, and the colonies of Connecticut and New Haven were founded. English noblemen even began seriously to consider plans of removal. The repressive policy of the English government at home was rapidly making the New England experiment a success.

All this very seriously affected the interests of Gorges and the New England council. The territory north of the fortieth degree of latitude, which they for nearly fifteen years had been vainly endeavoring to colonize, was being settled, but by colonists who to them were unwelcome. These colonists did not recognize the title of the council to the region in question, and its agents they supplanted or drove out. They had also proved too strong for Gorges before the privy council. But there, if anywhere, the battle must be won. Gorges, therefore, renewed his efforts in that quarter and this time with the assistance of Archbishop Laud. That primate had never before turned his attention to the colonies, but, becoming impressed with the fact that they might be a refuge for the Puritans, he was ready at once to extend his

[1] Bradford, 355.

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repressive measures thither also. The enforcement of conformity, which he was already attempting in Scotland and Ireland, might be tried in the colonies as well. In connection with the desire thus begotten in the mind of Laud, to suppress dissent even in those remote regions, the monarchical idea of colonial administration appears again in the foreground. By utilizing these forces Gorges was able to win what for a time appeared to be a triumph over his foes.

In February, 1634, in consequence of the reports that many persons were leaving the kingdom because of religious discontent, eleven ships bound for New England were stopped by order of the privy council. Before the end of the month, however, though not until the passengers had taken the oath of allegiance and promised to use the Book of Common Prayer in worship during the voyage, the ships were allowed to proceed.[1] If Morton's statement in his letter to Jeffery[2] is true, an inquiry into the origin and provisions of the Massachusetts charter was soon after held before the privy council, Sir Richard Saltonstall and other patentees being present, and Morton and Ratcliff perhaps testifying again against the colony. The patent, it is said, was solemnly declared to be void, and the king took the matter into his own hands.

On April 28, 1634, as partly a result, we may suppose, of this opinion, a royal commission[3] was issued appointing Archbishop Laud and eleven other privy councillors as a board of commissioners for trade and plantations. Among the members who were associated with the archbishop were Lord Keeper Coventry, the archbishop of York, the lord treasurer, the Earl of Portland, the Earl of Manchester, who was lord privy seal, Earl Arundel, who was the marshal of England, with the Earl of Dorset and Lord Cottington, who held the other chief offices in the royal household, John Coke and

[1] Colonial Papers, Feb. 4, 1634; Palfrey, I. 371 n.; Hazard, Hist. Colls. I. 341. In Va. Mag. of Hist. IX. 271, is a statement by the customer of London which shows what the administrative practice of the officials of the Treasury at this period was in regard to granting passes to persons leaving the kingdom and requiring from them the oaths of allegiance and supremacy.

[2] Winthrop, II, 233.

[3] Hazard, Hist. Colls. I. 344; Hutchinson, Hist. of Mass. I. App. 440.

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Francis Windebank, who were secretaries of state. It thus appears that many of the leading ministers of the king had seats upon this board. It consisted wholly of privy councillors. Very large powers were intrusted to the new board of commissioners, and, though relations with New England were the immediate occasion of its appointment, its powers were to be exercised over all the colonies alike. They were to have "power of protection and government" over all existing and prospective colonies; to make, with the royal assent, "laws, ordinances, and constitutions" both concerning the public affairs of the colonies, as about the interests and estates of individuals therein. They were to secure maintenance for the colonial clergy by tithes and oblations, distribute the same and regulate "all other matters ecclesiastical." They were given power to punish offenders even with death. They might also examine into the conduct of governors, call them to account for violation of ordinances, depose and otherwise punish them. They were to establish and regulate courts and appoint magistrates. They were to act as a court of appeal and bring before themselves in England any governor or officer who should usurp another's authority, wrong another, fail to suppress rebels or to obey the king's commands. Through them letters patent were to be issued for the founding of new colonies, and orders to do all other things which should be necessary for the government and protection of the colonies. In 1638 and 1639 we find a subcommittee associated with this board, but this was probably a group of experts temporarily brought together to advise concerning Virginia affairs and matters of revenue.[1]

On February 21, 1634, more than two months before the appointment of this commission, the privy council had ordered Mr. Cradock, then before the board, to have the royal charter of Massachusetts produced.[2] This command Cradock transmitted to New England. When the letter arrived, Winthrop, whose popularity had temporarily waned, had been succeeded by Dudley in the governorship. The

[1] Col. Papers, 1574–1660, 281 *et seq.*, 301; Va. Mag. of Hist., X, 428; XI, 173, 285; XII, 394.

[2] Hazard, I. 341; Winthrop, I, 161, 163.

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message, which was regarded as unofficial, was submitted to the assistants in July, who after long consideration adopted the policy of delay and evasion, a course which the colony was to pursue in similar relations with the crown throughout the future. In reply to Cradock, it was stated that it would be impossible to send the charter without the consent of the general court, a session of which would be held in the following September. Edward Winslow of Plymouth was about to sail for England and to him this reply was intrusted. Winslow went as agent[1] for his colony, and incidentally to serve the larger cause of Massachusetts, thus helping to bring the important institution of the colonial agency clearly into existence. His chief errands on behalf of Plymouth were to explain to Lord Say and his partners the share which Plymouth men had had in the death of Hocking near their trading post on the Kennebec river, and to procure the aid of the home government in restraint of the operations of the Dutch on the Connecticut river, and of the French on the northeast, they having recently destroyed the trading post which Plymouth had established on the Penobscot river. Either diplomatic interposition by the English government concerning these matters was desired, or special authority which should legalize any combined effort that the New England colonies might make to defend themselves against all foreign enemies. An errand like this the Massachusetts authorities would never have undertaken or approved, and the fact that Plymouth should undertake it shows how much more conciliatory and submissive was its attitude toward the home government than was that of Massachusetts. Though Winslow performed the duties of his mission with ability, he played into the hands of those who were laboring to destroy Puritan independence in New England and himself temporarily suffered in consequence.

When he arrived in England and began prosecuting his errand before the plantation board Winslow, though at first succeeding well, soon found himself opposed by the Gorges and Mason influence and by the archbishop of Canterbury.[2] The plan that, upon the recall of the Massachusetts charter,

[1] Bradford, 384, 389 *et seq.* [2] Bradford, 391.

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Gorges should be appointed governor of New England, was already formed, and Winslow's suggestion that the existing colonies should be empowered to resist the Dutch and French at their own expense was inconsistent with the scheme of Gorges, as well as with that of Laud to enforce uniformity in the colonies. Thereupon, when Winslow seemed on the point of succeeding, Morton was procured to enter further complaints against the New Englanders. After Winslow had replied to him, the archbishop began to ask questions — some of which were suggested by Morton's statements — about the extent to which the canons of the Church were violated in Plymouth. Winslow confessed that occasionally, when they lacked a pastor, he, though a layman, had officiated publicly in church. He also admitted that when they were without a minister, he had performed the marriage ceremony, and went even so far as to defend civil marriage before their lordships as not inconsistent with Scripture. "For these things," says Bradford in his account of the episode, "ye bishop, by vemente importunity, gott ye bord at last to consente to his committemente; so he was comited to ye Fleete, and lay there 17 weeks, or ther aboute, before he could gett to be released. And this was ye end of this petition, and this business." The last statement of the Plymouth historian is not quite true, for from his prison Winslow addressed a petition to the privy council, in which, while again admitting the truth of what he had previously stated about his own conduct, he justified it as necessary, and defended the Plymouth people against the charge of being factious, while he exposed the bad character of Morton and of the other assailants of Massachusetts.[1]

Meantime, within the New England council, and beginning as early as February, 1634, preparations[2] were in progress for the surrender of its charter, so that the way might be cleared for the appointment of a governor general of New England. On February 3, a meeting of the council at Lord

[1] This petition is wrongly entered in the Calendar of State Papers under November, 1632; Winthrop, I. 205.

[2] Records of the Council for New England, in Proceedings of Am. Antiq. Soc. 1867, p. 114 *et seq.*

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Gorges' house, which was attended both by Sir Ferdinando and by Captain John Mason, agreed upon a redivision of the sea coast from the fortieth degree of latitude to Nova Scotia. This was substantially a repetition of the attempted division by lot which occurred at Greenwich in 1623, but which had never been confirmed or carried into execution. The territory was now divided into eight sections and distributed among the members of the council, Mason receiving New Hampshire and the section between Naumkeag and the Merrimac river, Gorges receiving the region which was soon to be known as the province of Maine. Deeds of feoffment were made out for the proprietors of the several sections.

A formal surrender of the charter of the New England council to the king was drawn on April 28, though it was not executed until the 7th of June. In this the failure of its enterprise thus far was acknowledged, and the cause was found in the alleged surreptitious[1] grant to Massachusetts and its confirmation by the king which was obtained without the knowledge of the council. "By which means they," the document continued, "made themselves a free People, . . . whereby they did rend in pieces ye first foundation of the building, and so framed into themselves both new laws and new consceipts of Religion and forms of ecclesiasticall and temporall Orders and Government, punishing divers that would not approve thereof, some by whipping, others by burning their houses over their heads, and some by banishing and the like." The complaints which arose from these events the council had been called upon to redress. It had referred the petitions to the king. Its members had been called before the privy council, but there had disclaimed all share in the evils. They had then referred the whole matter to the king and his ministers, and of their resolve to take it fully into their hands this surrender of the charter was the first and natural result.

The surrender of the charter was duly accepted by the king, and he announced his resolve to appoint Sir Ferdinando Gorges governor general of New England, and to give

[1] Records of the Council for New England, *ibid.* 124.

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him adequate royal support. One of the provinces should be allotted to him for his maintenance, while provision was made for the succession of his office. These steps having been taken, the king was petitioned to order the attorney general to prepare patents for the eight lords among whom the territory had been divided by lot, that thereby fully organized proprietary provinces might be formed within the governor generalship. On May 5, 1635, Thomas Morton received an appointment from the council as solicitor for the confirmation of the deeds under the great seal, as also to prosecute a suit at law for the repeal of the Massachusetts patent. But the confirmation of the deeds was evidently beset with delays, for, on November 26, an order was issued that the passing of the patents should be expedited with all conveniency. The decisive steps, however, which would make them effective patents seem never to have been taken.

While the events which have now been outlined were occurring in England, Massachusetts showed the spirit in which she intended to meet the attack. The general court, during the session of September, 1634,[1] instead of considering the order for the return of the charter, took the first decisive steps toward creating a system of defence within the colony. Authority was bestowed on the assistants to impress laborers for public works. Defences on Castle island and at Charlestown and Dorchester were ordered to be built, and a committee was appointed to take charge of them. A committee was also appointed to provide ammunition, and another to take general charge of any war which might occur within a year. Arms were to be distributed and trainings held. With equal zeal the court legislated against new and extravagant fashions in dress, an enactment which to the Puritan mind fitly accompanied strenuous preparations for defence. In the November which followed this important session of the general court, John Endicott at Salem vented his feelings on the situation by cutting the cross from the English colors. This act savored more of sedition than any event which had yet occurred, and the magistrates feared that such an interpretation would be put upon it in

[1] Col. Recs. I. 123 *et seq.*

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England;[1] but some delay ensued before he was punished by exclusion from office for one year. So strong, however, did the feeling against the colors seem to be that all the ensigns were ordered to be laid aside.

In January, 1635,[2] the governor and assistants submitted to the ministers the question, what should be done if a general governor should be sent from England; and the unanimous reply was that, if one were sent, he ought not to be received, but the colony, if able, should defend its lawful possessions. Later a beacon was ordered to be set on Sentry Hill in Boston, while on a day early in April a false alarm of the approach of two ships quickly brought together the train bands of Boston and the adjacent towns. In this state of preparedness the colony awaited events in England.

Gorges, on the other hand, was striving to secure means to take him to New England. It was his expedition, if any, which the outlook on Beacon Hill would some day see approaching. But it never came. The English government was busy with ship money and other devices for supplying the exchequer independently of appropriations by parliament. It had neither money nor soldiers with which to support Gorges' enterprise. The archbishop could fulminate decrees and imprison luckless New England Puritans, if they came within the realm; but more, it was proved, he was unable to do. Gorges soon found that the elements of his problem were much the same now as they had ever been. He could command only his own resources, and they were painfully inadequate. Never very great, they had been seriously reduced by his previous experiments in colonization. An effort was made to fit out a single vessel to bear the governor general across the sea, but that utterly failed. Thus Gorges' direct share in the great scheme of reducing New England to the condition of a royal province ended in complete failure. Like all his plans, it was large in conception but feeble in execution. In the light of these facts, the military preparations of Massachusetts do not appear so absurdly inadequate as they would if they had been directed

[1] Winthrop, I. 179, 186, 188. [2] *Ibid.* 183.

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against a great European power which was in a condition to strike the little colony.

But this was not the end of the episode. The plan of Gorges and of the officials who were supporting him involved the revocation of the Massachusetts charter. Only by this step could the way be legally cleared for the establishment of the royal province. Thomas Morton had been retained to aid in prosecuting this suit. It was begun in June, 1635, by the attorney general filing before the King's Bench an information in the nature of a writ of *quo warranto* against the Massachusetts company. The charge was that their charter was void *ab initio* and therefore that the company should be dissolved. As this case, especially when compared with that of the Virginia Company, illustrates very clearly the way in which the removal of a corporation across the sea affected the exercise of judicial control over it, it deserves somewhat extended notice.

The information[1] filed by the attorney general in this instance was directed not against the corporation itself, but against its members, whether resident in England or New England. It cited the main provisions of the charter, and declared that the said franchises and liberties had been usurped in contempt of his majesty the king. At this point appeared the significance, from the standpoint of judicial control, of the removal of the Massachusetts company into New England. The writ issued in pursuance of the information was not served upon the officers and members of the corporation who were resident in New England, and probably could not have been served and a return secured within the specified legal time. The information was filed in Trinity Term of 1635 (11 Charles I) and the trial was held in Michaelmas Term of the same year. At the trial, which was before the King's Bench, fourteen members of the company appeared and pleaded that they had not usurped any of the said liberties and did not claim them.[2] There-

[1] Publications of the Prince Society, Hutchinson Papers, I. 114.

[2] 4 Mass. Hist. Colls. VI. 58. A statement in a letter from Emanuel Downing to Rev. Hugh Peters throws light on this transaction. Writing, in 1640 from Salem, of the *quo warranto* he said, "most of them that ap-

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upon in each case it was decreed by the court that the individual concerned "shall not for the future intermeddle with any of the liberties, privileges or franchises aforesaid, but shall be forever excluded from all use and claime of the same and every of them."[1] Matthew Cradock made default and was convicted of the usurpation charged. It was decreed that the liberties, so far as Cradock possessed them, should be seized into the king's hands, that he should be excluded from the further use of them and should be held to answer for the usurpation. The record closed with the statement that "the rest of the patentees stood outlawed and noe judgment entered up against them."

The effect of this action on the part of King's Bench seems to have been to exclude from the company such of its members as were accessible and appeared, while the corporation itself remained intact. The governing body of the company defaulted through non-appearance, and the record states that they stood outlawed. But it also states that no judgment was entered up against them. We have no record that steps were taken to complete the process of outlawry, which would have required the issue of several additional writs, and those directed toward the execution of a judgment already pronounced and recorded.[2] Had it not been for the legal difficulty connected with the service of the writ, it is altogether probable that the Massachusetts company would have shared the fate of the Virginia company, and the way would then have been cleared for the governor generalship of Gorges, as soon as the New England council surrendered its charter. As it was, on three[3] occasions between the summer of 1631 and the spring of 1639, authoritative information came to Massachusetts from the

peared I did advise to disclayme, which they might safely doe, being not sworne Magistrats to governe according to the patent; and those Magistrats which doe governe among us being the only parties to the patent were never summoned to appear. Therefore if there be a Judgement given against the patent, its false and erroneous and ought to be reversed with a motion in King's Bench. . . ."

[1] The fact that this was the decree in the cases of Sir Henry Roswell and Sir John Young is not expressly stated; but there is no reason for supposing that they received different treatment from the others.

[2] Kyd, On Corporations. [3] Winthrop, I. 269, 323, 359.

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commissioners of foreign plantations in England, that the magistrates and others had no legal right to govern the colony, that a judgment had passed against the charter and that it should be sent home. To one of these messages a reply was sent excusing themselves for not transmitting the charter lest it might be interpreted as its surrender. Of the last peremptory demand no notice was taken. That the government, had the corporation been resident in England, would have allowed itself to be balked in this way is hardly credible, even though it were at the time on the eve of a civil war. But the corporation stood, and, when the Restoration came, was treated as in full legal existence.

The attitude which Massachusetts maintained toward the obligations of allegiance and the degree of its isolation as a colony are illustrated by a discussion in 1636 concerning the necessity of flying the English colors on the fort at Castle island.[1] A mate on an English ship had charged them with being rebels because they did not keep the king's flag flying on the fort. The controversy which followed revealed the fact that there was no English flag in the colony. The seamen offered them one. But the magistrates scrupled to receive it, because "we were fully persuaded that the cross in the ensign was idolatrous." But after consulting Cotton and others, it was decided that, as the fort was the king's and maintained in his name, "his own colors might be spread there." And it was done, though some of the magistrates, Winthrop among them, did not approve and would not join in the act.

[1] Winthrop, I. 223–225.

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CHAPTER IV

BEGINNINGS OF ROYAL GOVERNMENT IN VIRGINIA

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As has already been stated, the transition from a chartered colony to a royal province involved in every case the substitution of royal officials for those of the proprietor, or for those who had been elected by the freemen of the colony. In other words, a royal executive took the place of an executive which consisted of the king's grantee and of the officials whom that grantee had either appointed or elected. The province thenceforth stood in immediate, instead of mediate, relation to the crown. The territory within its bounds, so far as it had not already been granted to private parties, became again a part of the royal domain. Private rights, as they existed in the colony, were so guarantied that they were not diminished as the result of the transition. But the affairs of the province came in part to be managed by officials and servants of the king in England, while the administrative officers who resided in the province were royal appointees.

We are now concerned with the very beginnings of English colonial administration, as applied to the province of Virginia. The forms and precedents by which it was in future to be guided were then in the initial stages of their development. And yet under the early Stuarts the official connection between Virginia and England was in some respects more intimate than at any later period, or than they were in the case of any other royal province. Communications were regularly sent back and forth, filled with details, not only about official doings, but about the tobacco industry and other phases of social life. Instructions to the early governors abounded in requirements which of course would apply only to Virginia. In details of this kind the home government took more direct interest than at later times.

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As colonies multiplied and their diverse interests demanded consideration, control became generalized and details were left to be worked out more by merchants, planters, and local officials. Virginia then fell into its place among the rest. At the time of which we are speaking agents, as we shall see, were occasionally sent from Virginia to England. The acts of its assembly were sent to the privy council for its allowance.[1] A few instances appear of civil suits in Virginia being heard in England, and of colonial cases coming at this period before the court of the lord high admiral in England;[2] but suits of the latter class concerned other colonies even more than Virginia.[3]

Some of the earliest utterances of the crown upon the subject of government in Virginia indicated a purpose to revive the system of 1606, retaining the patentees and leaving rights of trade in their hands, but revoking all rights of government.[4] But the leaders of the majority in the old company were unable to reconcile themselves to anything but its restoration, with all the powers which it possessed under the charters of 1609[5] and 1612. This the colonists would at the time have preferred, for the recent administration of the province, on the whole, had been satisfactory to them. But the government, if it had ever intended to retain the patentees, soon abandoned such thought, and, in the famous proclamation of 1625, seemed to commit itself to the royal province as a form of organization.

In the case of Virginia the process of establishing royal government began before the judges had declared the charter of the company to be null and void. On July 5, 1624, under an act of council of the previous month, the king

[1] Randolph Mss., Va. Hist. Soc. fol. 219, March, 1631.

[2] A suit between Martin and Bargrave over the possession of cattle was pending in Chancery in 1625. Va. Mag. of Hist. VII. 132. There was also a suit over Pountis's estate, but it was probably not prosecuted in England. *Ibid.* 134.

[3] Admiralty Court, Instance and Prize, Libel Files.

[4] See Discourse of the Old Company, Va. Mag. of Hist. I. 304 *et seq.*

[5] See order in council of June 24, 1624, Calendar of Colonial Papers under that date: "His Majesty being resolved to renew a charter, with former privileges and amendment of former imperfections." Sir F. Nethersole in a letter to Carleton, July 3, 1624 (Colonial Papers) states the fact more directly.

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appointed a large commission,[1] with Viscount Mandeville, Lord President of the Council at its head, to regulate the affairs of Virginia and give orders for its government. The commission consisted of ministers of state, the law officers of the crown, knights, clergymen, and merchants. It contained many who had been members of the company, but they were selected largely from the party of Smith and Johnson. Though its powers were large, it can hardly be considered as a predecessor of the later boards of trade and plantations, because its work was expressly confined to one colony. It rather involved a return to the arrangement of 1606. Authority was given the commission to take charge of the public property of the Virginia company and colony and to exercise the powers which had been conveyed to the company by royal charter. For these purposes it might consult both adventurers and planters. It was closely connected with the privy council, and was to act under instructions from that body and the king. The meetings of this commission were held weekly at the house of Sir Thomas Smith. There they made use of the records of the company, heard testimony concerning the condition and needs of Virginia, received applications from those who were going or sending thither, and considered what policy it was best to pursue. Wyatt was temporarily continued in his office as governor, and with him was associated a council consisting of Yeardley, Francis West, George Sandys, Ralph Hamor, Mathews, Peirsy, Claiborne, and others.[2]

The members of the old company were consulted concerning the best form of government for the province, and returned the reply to which reference has already been made. They took a pessimistic view of the situation and belittled the work of all except the Sandys-Southampton party. They insisted that the system which had just been brought to an end by the *quo warranto* was the only true one. They referred to one discouraging result which the establishment of

[1] Va. Mag. of Hist. VII. 40; Colonial Papers, July, 1624; Neill, Virginia Carolorum, 11.

[2] See proclamation, Rymer, XVII. 611. The substance of the commission is in Va. Mag. of Hist. VII. 129.

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royal government was sure to have on Virginia. Large sums had been expended by the company in aiding emigration to the province, in promoting industry there, in furnishing supplies and relieving distress. If the English government intended to continue this policy and to meet out of public revenues the expense which it entailed, it was most proper, said the writers[1] of the memorial, that the province should be administered through a royal council. But if, when royal government was established, all aid was withdrawn; if assistance to emigration ceased, and the plantation was left to support itself, both planters and adventurers would be discouraged, and many would abandon the enterprise. Though the temporary discouragement did not result so disastrously as the memorialists predicted, the substitution of government by the crown for government by the company threw the colonists more on their own resources.

At first the colonists, as well as the former adventurers, feared that they might suffer both in bodies and estates from the establishment of royal government. In July, 1624,[2] the governor, council, and assembly sent by John Pountis, their agent, and vice admiral of Virginia, a petition to the king, entreating that credit might not be given to the malicious imputations which had been circulated against the late government, or the statements believed that the condition of Virginia under the administration of Sir Thomas Smith had been a happy one. In order to show that the opposite was true they presented an elaborate statement contrasting the oppressiveness of the government under Smith, and the sufferings of the colony at that time, with the liberality of the régime that followed and the progress which the colony had then made. Its prosperity, however, had been cut short by the massacre, which had "almost defaced the beauty of the whole colony," and prevented the continuance of "those excellent works wherein they had made so fair a beginning." Famine had followed for a year, but severe blows had been inflicted on the savages, and it was hoped that they would be driven

[1] Va. Mag. of Hist. I. 304.

[2] Colonial Papers, July, 1624, June 15 (?), 1625; Hening, Statutes of Virginia, I. 128.

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from the lower parts of the colony. The chief objects of the petition were to pray the king not to deliver the province over again to Sir Thomas Smith and his associates, and to grant to Virginia and the Somers islands the monopoly of the importation of tobacco, "not as an end to affect that contemptible weed, but as a present means to set up staple commodities."

Five months later[1] the governor and council were able to report that in a two days' battle a great victory had been won over the Pamunkeys and their confederates. Many of the Indians were slain and sufficient corn destroyed to keep four hundred men for a twelvemonth, and that with small loss to the English. The health of the colonists was good; a plentiful harvest of corn had been gathered. In view of these facts it was possible for them to state, though probably with exaggeration, that the colony had "worn out the scars of the massacre."

That their confidence was somewhat premature is indicated by a petition from the same source, which is supposed to have been sent the following June.[2] Acting on the supposition that, because of the death of Mr. Pountis, the previous petition had not been delivered, the governor, council, and assembly again express a fear that they are to be delivered into the hands of Sir Thomas Smith. Their fears on this subject had been aroused by the information that the persons of whom they had so justly complained had been appointed members of the commission for regulating the affairs of the colony. The colonists had come through the winter with scanty supplies, and, because of what seemed to be the desperate state of the colony, some of the planters had resolved to return to England and petition for redress and protection. Lest the clamors of so many should be troublesome, Sir George Yeardley had been selected by the governor, council, and assembly to present their grievances, and a favorable hearing for him was solicited.

Yeardley, who was now returning as agent from Virginia, asked for a hearing before the privy council in October,

[1] Colonial Papers, December 2, 1624.

[2] *Ibid.* June 5 (?), 1625.

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1625.[1] He referred to the distress which existed in the colony because of lack of supplies, and to the discouragement which had been caused by the uncertainty as to the government. A supply of munitions, apparel, tools, and other commodities was what they first needed, and these should be sent at once. With this petition appears the earliest demand on the part of American colonists that the king should send troops to their relief. The former petition concerning tobacco was repeated, and in addition general freedom of trade was insisted upon and also the necessity of exempting staple commodities for a time from the collection of duties on their importation into England. The state of political feeling among the colonists was indicated by the request not only that those against whom they had complained should have no share in the government, but that by a new patent, confirmed by parliament, the possession of their estates should be guarantied to the colonists; also that the continuance of free general assemblies should be assured, and that the people should have a voice in the election of their officers.

In April and May[2] of the following year, additional communications were sent to England by the Virginia magistrates, repeating their requests concerning the tobacco trade, and stating that, if the plans for defence which were under discussion were executed, four hundred men must be sent to the colony with engineers and full equipment and supplies. The plan included the building of a palisade for a distance of six miles, between Martin's Hundred and Kiskiack, furnished at intervals with blockhouses. This, it was hoped, would secure from Indian attack a tract of 300,000 acres, where the principal settlements in the province lay, and thus insure its peaceful economic growth. For the construction of the palisade and guard houses £1200 in ready money would be needed, and their maintenance would cost £100 a year. Forts and fortified towns must also be built and garrisoned, while the offensive war should be continued against

[1] Colonial Papers, 1574–1660, 75.

[2] *Ibid.* The important Letter of May 17, 1626, is printed in full in Va. Mag. of Hist. II. 50.

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the Indians. Discovery on a large scale toward the South Sea should also be undertaken, and emigration encouraged to fill up the country. A public magazine should be maintained, which adventurers would probably be found ready to furnish at twenty-five per cent profit, accepting tobacco in payment at 3*s*. per pound. "But the ground work of all," wrote Wyatt and his associates, "is that their bee a sufficient publique stock to goe through with soe greate a work, which wee cannot compute to bee lesse then £20,000 a yeare, certaine for some yeares; for by itt must bee maintained the Governer and counsell and other officers here, the forrest wonne and stockt with cattle, fortifications raysed, a running armye mainetayned, discoveries made by Sea and land, and all other things requisitt in soe mainefould a business." For a considerable part of this the governor and council looked to the home government.

Large plans of this nature might have appealed to Sandys, and under his leadership, if unopposed, there might have been some prospect of their realization. But to the government of Charles I, which was not only inherently weak but paralyzed by a conflict with parliament and consequent lack of supplies at home, it was useless to suggest such measures as this. At Whitehall they fell on deaf ears. Whether or not Sir George Yeardley secured a hearing before the council in the fall of 1625, what discussion went on, and what was its result, we are not informed. But that any concession was made which involved expenditure or special sacrifice on the part of the home government is not probable. Yeardley received an appointment as governor, and a royal command was issued that judgments, decrees, and important acts should be determined by the governor with the majority of the council, and all done in the name of the king. The proclamation of May 13, 1625, declared that the government of Virginia should be administered through two councils, one resident in England, and the other in the province, and that both should depend immediately on the king. This system continued as long as the commission of 1624 was in existence, and was renewed in June, 1631, by the appointment of a commission of which the lord chamberlain, the Earl of

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Dorset, was the first member. Associated with him was a distinguished array of officials, merchants, and former members of the company, in rank much like those who made up the commission of 1624.[1] It recommended the reëstablishment of the company and the issue of a new charter. This should provide for a president and council who as the appointees of the king should administer from England the government of the colony. The resident governor and council in Virginia should likewise be royal appointees. All other rights and privileges pertaining to the enterprise, except those of government, should be again intrusted to the patentees. This was clearly a plan for a revival of the system of 1606. But it appears to have met with no favor. A memorial was presented in opposition to the reëstablishment of the company in any form; and it is difficult to see how the proposal of the commissioners could have satisfied the majority of the old patentees. Not only was it dropped, but the commission itself soon disappeared from view. This was the end of projects for the administration of Virginia alone, and the next experiment — that of the commissioners of 1634, which has already been described — was directed toward the control of the affairs of the colonies as a whole.

So far as its internal affairs were concerned, Virginia passed through the transition from proprietary to royal government without any violent or sweeping change. The policy of the company, together with the Indian massacre, had previously removed much that was peculiar in the land system of the province. With the development of counties the plantation as a form of grant disappeared. The ordinary system of patents to individuals, subject to a quit rent of 2*s.* per hundred acres, which had been established by the company, was continued.[2] These were made partly in recognition of personal adventures and partly as head

[1] Va. Mag. of Hist. VIII. 29, 33–46, 149.

[2] See Virginia Land Patents, Vol. I. 1623–1643, in office of Register of the Land Office, Richmond. For the purposes of the genealogist these are abstracted in Va. Mag. of Hist. II. *et seq.* Grants for the royal period from the records of several of the counties are abstracted in William and Mary College Quarterly, IX., X., XI., and XII. In the instructions to the governors appear orders in reference to the granting of land. Much detailed informa-

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rights. In many of the early grants under the crown express reference was made to the plans and authority of the company as confirmed by royal patents issued to the governor and council. Grants continued to be made as parts of first dividends, to be increased when the grantee, his heirs or assigns, had properly settled the land. Tracts of land belonging to the company continued for a time to exist in Accomac, Elizabeth City, and possibly elsewhere, and these were subject to lease. The forms used in making grants and the officials concerned were much the same as those of the later period of the company. As county government developed, applications for land were made before the county justices, and the clerk made a certificate of the amount which the applicant claimed or to which he was entitled. This was sent to the office of the secretary of the province, whence a warrant was issued for the survey. On the basis of the return of the surveyor the patent was made out and issued in the name of the king and under the immediate authority of the governor and council. As a rule, grants were required to be settled within three years, or they lapsed. From the earliest times details relating to the granting, bounding, fencing, and settlement of land were specified by legislation,[1] but the authority to grant it was always vested in the governor and council. Grants of moderate size were the rule, the great majority of them being limited to a few scores or hundreds of acres, and only in a small minority of instances did they exceed one thousand.[2] Large plantations were, as a rule, acquired by accumulations and purchases of head rights, by inheritance and transfers of estates, the process of enlargement being steadily favored by the economic system of the province.

Prior to 1630 settlement in Virginia had been confined to

tion about the land system of Virginia, as about all other matters connected with local institutions and life, is to be found in the county records; but they have not yet been used in any very systematic or profitable way.

[1] Much more was this true in early Virginia than in the early history of Maryland.

[2] This appears from the lists, especially those already referred to as given in the W. & M. Coll. Quarterly.

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Accomac peninsula and the valley of the James.[1] By 1634 that region had been divided into counties, the original eight being James City, Henrico, Charles City, Elizabeth City, Warwick, Isle of Wight, Charles River (later York), and Accomac (later Northampton). These were the outgrowth of local settlements (some of them for a time called "corporations")[2] which had their origin under the company. In 1630 the first settlements were made on the south side of York river, at Kiskiack and York. The quarrel between the Maryland government and Claiborne occasioned, a few years later, the removal of a part of the inhabitants of Kent island to the neck between the Potomac and the Rappahannock rivers, which in 1648 became Northumberland county. An Indian war in 1647 for a time checked migration into that region, but by 1651 enough settlers had come thither to justify the formation of Gloucester and Lancaster counties. Out of the western part of Northumberland county Westmoreland was formed in 1653. Three years later the upper part of Lancaster was set off as Rappahannock county. In 1654 the upper part of York became New Kent.[3] Meantime, on the south side of the James, Upper and Lower Norfolk counties and Surry were organized, the name of Upper Norfolk being changed to Nansemond in 1646.[4]

Whether in every case authority for the organization of counties was given by act of the grand assembly, is not quite certain. But, at any rate, the assembly at an early date began the creation of these subdivisions by its own acts and continued this course regularly thereafter.[5] As in other colonies, the fixing of the bounds of the county and the establishment of its court, with legislation concerning the jurisdiction of this body, were the important administrative acts connected with the founding of a county. Provision for these matters appears at large among the Vir-

[1] W. and M. Coll. Quarterly, IV. 28.
[2] See Vol. I. of this work. Hening, I. 224.
[3] Hening, I, 374, 381, 388, 427.
[4] *Ibid.* 247, 321, 373.
[5] *Ibid.* I. 224, 247, 249, 250, 352, etc.

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ginia statutes, even from the earliest dates. In the year of the dissolution of the company the grand assembly defined the jurisdiction of the monthly courts in Charles City and Elizabeth City counties.[1] Thus the extension of the county system kept pace with the expansion of settlement, and in it all the assembly bore a share which, as a rule, was scarcely equalled in the early history of the proprietary provinces. The counties in turn, with a few exceptions, became the units of representation in the assembly.

The establishment of parishes, organized after the English model and a mark of the exclusive supremacy of Anglicanism in Virginia, proceeded under the authority of acts of assembly in much the same manner as did that of counties. Sometimes their bounds coincided with those of a county, again they were separately organized, and still again they were formed by the subdivision of counties. As in the case of counties their bounds were specified by acts of assembly, while the administrative bodies in each were gradually developed under the authority of statute. Their growth was closely connected with the development of the ecclesiastical, the judicial, and the military institutions of the province, and with elections as well, for, though the unit of representation in the house of burgesses was regularly the county, occasionally a parish was allowed to send members; and as the larger towns were incorporated as boroughs they too became entitled to separate representation in the assembly.[2]

Conditions were no more favorable to the development of towns in Virginia than they were in Maryland, or in the provinces farther south. After 1655 efforts were repeatedly made to encourage their growth by legislation, and the argument derived from trade facilities was strongly urged in their favor. But overland traffic was too difficult and the private wharves of the tobacco planters on the river banks were too accessible for all parties concerned to admit of change. Therefore, with the exception of Jamestown

[1] Hening, I. 125.

[2] *Ibid.* I. 228, 229, 249, 278, 347, etc.; *ibid.* 227, 260, 277, 400, 421, 478.

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and a borough or two elsewhere, nothing resembling a town existed in Virginia in the seventeenth century. In the few which were founded the territorial and other arrangements were such as have already been referred to as existing throughout the southern colonies.

The judicial system of Virginia consisted of the general or quarter court and the county courts, while the general assembly also heard appeals, though, during much of the period, in cases which could not be brought under known laws or precedents. The general court[1] consisted of the governor and council in judicial session, and met quarterly at Jamestown. It was the highest distinctively judicial body in the province, and had jurisdiction over civil suits involving more than 1600 pounds of tobacco and over criminal cases involving life or member. The records of the governor and council as general court in early times were not kept very distinct, for in those which have survived appear many matters of a purely administrative nature.

The courts of the counties — called until 1643 monthly courts — consisted of the commissioners of the counties, who soon came generally to be known as justices. Their powers and procedure approximated to those of the county justices of England.[2] In 1643 their original jurisdiction in civil suits was limited to those which involved less than 1600 pounds of tobacco but more than 20*s*. sterling. Their criminal jurisdiction was limited to cases which did not involve life or member; but they tried a variety of crimes for which imprisonment, whipping, the pillory, tying neck and heels, and a variety of other penalties[3] were imposed. They probated wills, recorded inventories, and had the care of orphans. Like the county courts in England and in the colonies generally, they did a large amount of administrative business and that of a very miscellaneous character. This made them a most important part of the

[1] Va. Mag. of Hist. IV. 24, 246; V. 22, 113, 233, 361; Hening, I. 345, 477.

[2] Hening, I. 125. On page 186 is a commission which was issued to the justices in 1632.

[3] See Records of Northampton County, printed in Va. Mag. of Hist. IV., V.

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political and administrative system of the province. As was stated in their commission, the comprehensive duty of the county justices was to keep the peace, to see that all orders and acts of the assembly were obeyed, to guaranty the quiet and security of the people within their jurisdiction. Petty cases were heard by a single magistrate, while from the decisions of the justice the right of appeal lay to the general court.

Over the county justices the governor and council exercised the right of appointment and control. From the county justices and the families of the leading planters with which as a class the justices were connected, the council itself was recruited. This relationship was being established during the period with which we are now concerned, but it was not perfected until after the Restoration. At that time clearly appeared the intimate political and social relationship between the governor and council on the one hand and the county families and magistrates on the other which constituted the essence of Virginia government. In no province was the combination so perfect and harmonious as in Virginia. To it the aristocracy of that colony owed its origin. It was buttressed on the one side by the plantation system and on the other by commercial, social, and political relations with England.

After royal government had been once established, not so close attention was paid by the crown to the interests of Virginia as had been shown by the company. Only indirectly and to a very small extent did it incur expense for the colony. In 1634 Harvey writes that the king had granted him by privy seal £1000[1] per annum out of the Virginia customs, but he had received nothing as yet from that source, though he had been in office about five years. In June, 1638, he reported the arrears due him to be £4000. Apparently, like his predecessors, he was forced to look for support to fees and judicial fines, which had been granted to the governors by orders of the king from the outset.[2] We know also that the governors received considerable

[1] Va. Mag. of Hist. VIII. 158; X. 426.

[2] *Ibid.* VII. 373.

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grants of land in the province. Through a variety of indirect channels they probably managed to secure a respectable income, but it did not assume the form of a salary or come out of the English exchequer. Still more was this true of the other officers. The home government insisted that even the royal provinces should be self-supporting, that their expenditures should be met out of colonial revenues.

Apparently for more than a decade after the fall of the company little or no effort was made to collect the quit rent of 2*s.* per hundred acres, which, as we have seen, was affixed as a condition to grants of land. But with a view to its collection, in 1636 Jerome Hawley,[1] a man also prominent in Maryland history, was appointed treasurer of Virginia. He was also instructed to secure all the revenue which had originally belonged to the company and now was the right of the crown. Hawley did not enter upon his duties until late in 1637, but in May, 1638,[2] he wrote that he hoped to so improve the revenue as to make it defray the governor's "pension" of £1000 a year. Henceforth a royal treasurer and receiver general held a place among the officials of Virginia, the office becoming elective in 1693.[3] The efforts of these officers, together with the growth of the province, ultimately resulted in such a development of the quit rents that from them the salaries of later governors were paid.

Since necessarily the relations between the royal provinces and the English government lay chiefly within the sphere of the executive, the character of the colonial administration depended very largely upon the appointments that were made. At no time did such appointments seem specially attractive. They were least so in the early stages of colonial development. They involved, for indefinite periods, removal on the part of the appointees from England to small and remote settlements, which must have seemed much like places of exile. The privations to which officials, as well as

[1] Va. Mag. of Hist. IX. 43, 171, 177. [2] *Ibid.* X. 424.

[3] The successors of Hawley were Roger Wingate (1639–1641), William Claiborne (1642–1660), Henry Norwood (1660–1677), Henry Whiting (1692–1693). Stanard, The Colonial Virginia Register, 7, 24.

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planters, were subjected at the outset in Virginia and New England have already been indicated. They continued, though in less acute form, after Virginia became a royal province. Though in the beginning it seemed possible that the home government might provide salaries for royal governors, it failed to do so, and they were thrown back upon the uncertain returns from the quit rents or the still more precarious appropriations of the assemblies. Fees, perquisites, and land grants offered chances for dishonesty and extortion, which always made them obnoxious to the colonists at large. One illustration, among many, of the situation in which governors found themselves is furnished by a letter of Harvey from Virginia, dated May, 1632.[1] "I conclude with my humble prayers unto your honors to take unto your compationate cares my nowe almost three years service uppon the place without any means or annual entertainment to support my great expense, who may as well be called the hoste as gouvernor of Virginia, all the country affayres being prosecuted at my house in James Island where is no other hospitalitie for all commers, and if some speedie remedie and reliefe be not found for me, not onlie my creditt but my hart will breake."

In their relations with the council the early appointees of the crown to the governorship of Virginia held a position intermediate between that which led to the humiliation of Wingfield and the autocracy of Delaware and Dale; it was neither so weak as the former nor so strong as the latter. The commissions of the governors prior to the Restoration were in form analogous to those of justices of the peace and quorum in England. Authority[2] was given to the governor and council jointly. It was to be exercised by the greater number of them, among whom the governor was always to be one. "You, the said John Harvey," runs the commission of March, 1628,

[1] Va. Mag. of Hist. VIII. 150.

[2] Hening, I. 117; Va. Mag. of Hist. II. 51, 282; VII. 129, 260; IX. 38; Colonial Papers, April 2, 1631, December 16, 1634. Randolph Mss. (Va. Hist. Soc.), fol. 207; Neill, Virginia Carolorum, 101; Md. Arch. Proc. of Council, 1636-1667, p. 30. The commission granted in 1639 to Wyatt is in Va. Mag. of Hist. XI. 50. An abstract of the commission of 1641 to Berkeley is among the Sainsbury Papers, Va. State Library.

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"and the rest afore mentioned, to be the present Council of and for the Colony and Plantation in Virginia, Giving and by these presents granting unto you and the greater number of you respectively, full power and authority to execute and perform the places, powers and authorities incident to a governor and council of Virginia." Apparently the only distinction given to Harvey was this, that his name appeared at the head of the list and he was designated as governor. Discretion was not granted to the governor alone, after he had taken the advice of the council, as was the case in proprietary commissions and in royal commissions at least after the Restoration, and above all in the relations between the king and the privy council. Instead, the early commissions bound the governor by the advice of the council and were intended to necessitate his full coöperation with them. As compared with the other system, it lessened the prestige of the governor and increased the political authority of the councillors. As we shall see, it was an important cause of the civil troubles of Harvey's administration, that governor exerting himself to the utmost to get free from the restraints which it imposed.

Owing to the failure of the crown for a number of years after the dissolution of the company to call an assembly, the governor and council, with the officials dependent upon them, constituted the only organs of government in Virginia. With the governor the councillors, of course, shared in all the larger executive concerns of the province. When the assembly was revived, they formed its upper house, and that gave to the council a large part in legislation. As in all the provinces where the executive was vigorous, they constituted a group of social and political leaders both in their respective counties and in the colony at large, among whom traditions of government grew up and were perpetuated. Through the governor and council official connection was chiefly maintained with England. They faced, as it were, in two directions — toward the colony and toward the parent country, and in various ways mediated between them.

Owing to the lack of records, it is impossible to speak in detail of the work of the executive and of its relations with

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the assembly during the early history of Virginia as a royal province. It is even less possible than was the case under the company, for the records are now of a dry official character and they have been preserved in very fragmentary form. Statutes and isolated facts, with glimpses of the status of affairs at intervals, are all that now is available. The records of the general court which have survived are equally fragmentary, while the county records throw only an indirect light on the workings of the general executive of the province. But in this respect Virginia is not peculiar, for we have found the same thing true of Maryland and the Carolinas, and especially of the early executive records in all the colonies. In the case of none of the colonies is it possible to give a connected view of the doings of the executive or of its early relations with the legislature.

After the lapse of the period of four years which immediately followed the dissolution of the company, during which no assembly was called, the system of annual sessions was established and followed with great regularity. They were indeed required by the instructions issued to Wyatt in 1639, and by those given two years later to Berkeley. Abundant precedents were also established in favor of frequent elections. As in all royal provinces, legislation was subject to a double veto — by the governor and by the crown. Both executives frequently recommended the passage of laws and the adoption of specific lines of policy — especially those which affected the production of staple commodities, trade, and defence; but only slight evidence appears in the records of the time of the exercise of the veto either by the executive in Virginia or that in England. Until near the close of the seventeenth century the governor, council, and burgesses continued to sit together in one house, as they had done under the company. The long continuance of this primitive arrangement is at once a proof and an occasion of the maintenance of general good feeling. Except in the administration of Harvey, we find in early Virginia no instances of prolonged strife between the different branches of the legislature, which were so characteristic of the proprietary provinces and of the royal provinces in later times.

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At first the number of representatives who should be returned to the assembly from each county was not specified. In 1645 it was restricted to four, except in the case of James City county, which was permitted to send five, with one in addition for the borough itself. In 1669 and 1670 the number of burgesses was finally fixed at two for each county, with one additional from Jamestown. A similar privilege was bestowed in the eighteenth century on Norfolk, Williamsburg, and William and Mary College.[1] With the exception of the year 1655 all freemen who were twenty-one years of age had the right to vote for burgesses. During those years the suffrage was restricted to freeholders, leaseholders, and tenants.[2] But neither in the act of 1655 nor in that of 1670 was any attempt made to define the amount of the freehold or leasehold, and therefore, under the social conditions which existed, their provisions could not have made a radical change in the suffrage.

The writs of election were issued by the governor through the office of the secretary, and were published by the sheriffs in the counties. Elections were held at the county court houses, the sheriffs acting as inspectors and returning officers.

Enough has been said to indicate that in Virginia the assembly, from a very early period, held a prominent and well established position. It coöperated fully with the governor and council in the development of the law and constitution of the province. In this way a tradition was early established which was to have a powerful influence on colonial development and on the degree of self government to which the colonists laid claim. So far as the provinces in general were concerned, and especially the royal provinces, it was as significant in its way as was the constitution of the corporate colonies for New England. In the sphere of taxation the assembly asserted its claim repeatedly and with much thoroughness. In 1624, twice in 1632, and again in 1643, it was provided by statute that the governor and council should not levy any taxes, but that this power belonged exclusively to the grand assembly; and also that the expendi-

[1] Hening, I. 299; II. 20, 273, 282.

[2] *Ibid.* I. 403, 411, 412, 475; II. 280; W. & M. College Quarterly, VIII. 81.

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ture of revenue should be as it directed.[1] So far as we are informed, this principle was very consistently enforced.

The form of direct taxation which was levied during the early period was in general the same which had existed during the later years of the company. It was a poll tax imposed at a uniform rate upon the tithables of the province and made payable in tobacco. In 1645, to meet the expense of an Indian war, the poll tax was dropped because it was found to rest too heavily on the poor, and a general tax on property was substituted. This continued until 1648, when the poll tax was restored. Various devices were enforced for determining lists of tithables, but in 1649 the term was defined so as to include all male servants thereafter to be imported and all native servants and freemen of both sexes who were sixteen years of age. Lists were to be made yearly by the sheriff. By a later act, of 1658, heads of families were made to report their tithables to the clerk of the county court and he was bound to make[2] an annual list of them. Beginning with 1643, in obedience to Governor Berkeley's instructions, councillors were exempted from all public charges, church dues only excepted.[3]

In 1632 a tonnage duty, payable in powder, was introduced, the earliest example of a tax of that kind in the colonies. This was continued by later enactment and was collected by the commander of the fort at Point Comfort. In 1645, because of the war then in progress in England, an addition was made to the amount of this duty and it was made payable to the governor.[4] In 1658, because of the inequality of the poll tax, a duty of 2*s*. per hogshead was levied for one year on the export of tobacco. Collectors of this duty were appointed by the assembly for the several rivers and other localities whence tobacco was exported, and their commissions were issued by the governor.[5]

As in the other colonies, the expenditures were made for a variety of personal services and for supplies, chiefly con-

[1] Hening, I. 124, 171, 196, 244.
[2] *Ibid.* 143, 279, 305, 356, 454.
[3] Va. Mag. of Hist. II. 283; Hening, I. 279. In 1640 councillors with ten servants each had been once exempted. *Ibid.* 228.
[4] *Ibid.* 176, 218, 247, 301, 312, 533–534.
[5] *Ibid.* 491.

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nected in both cases with the defence of the province.[1] These, when stated in itemized lists, were allowed by the assembly and paid on the strength of this allowance by the treasurer. The wages of burgesses were paid by their counties. Officials received their reward chiefly in the form of fees and perquisites. The councillors were negatively rewarded, as we have seen, by exemption from taxes. In 1645 the assembly undertook to dispose of the quit rents,[2] assigning a salary out of them to the treasurer and providing that the surplus should go to the governor and council, "and thence to be disposed of by the Assembly as they shall think fitt." But this was probably a temporary measure, resorted to because the civil war in England had left the quit rents for the time undisposed of. In the case of many officers the amount of fees which they were to receive was early regulated by acts of assembly. Those which were so regulated prior to 1660 were the fees of the secretary, the secretary's clerk, the marshal, the clerks of the county courts, sheriffs, attorneys, surveyors, and the clerk of the assembly.[3]

So far as we know, the only feature which was peculiar to the Virginia executive was the dependent relation toward the council, already referred to, in which the governor was placed by his commission. This made him a member of the council, even when it was in legislative session. When taken in connection with special personal and political conditions which existed in Governor Harvey's administration, it helped to bring about an acute crisis. The accounts which have been preserved of this event are unusually full, and they throw more light on the political conditions of the time in Virginia than any other material which is at our command. In view of our fragmentary knowledge of the period in general, a full account of this episode becomes especially necessary.

The relations of Harvey, not only with the council but with the inhabitants of Virginia at large, were influenced to such a degree by the grant of Maryland to the Calverts, that without an explanation of the bearing of this act on Virginia rights and interests, the uprising against Harvey cannot be understood. The English government, as we have stated,

[1] Hening, I. 142, 171, 196. [2] *Ibid.* 307. [3] *Ibid.* 176, 266, 275, 335, 490.

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always held that ungranted and unsettled land within a royal province was royal domain, and hence was subject to grant by the king. It considered the unsettled parts of Virginia after the dissolution of the company as in this condition. The Virginians, however, insisted or were inclined to insist that the members of the late company had been tenants in common of the province, and that the territory extending two hundred miles north and south of Point Comfort was one and indivisible. They were proud of the old dominion with its magnificent proportions, and viewed with dislike any plan to divide it. Though the opinion that it could not be divided was untenable, it led the Virginians to actively oppose projects of division, especially if the interests of any of their number were likely to suffer thereby. The existence of this feeling was first revealed by the grant of Maryland to Lord Baltimore.

Special force was given to the argument of the Virginians by the interest which William Claiborne and his partners had in Kent island in Chesapeake bay.[1] Claiborne, who came from a north of England family, emigrated to Virginia in 1621, under appointment from the company as surveyor. His ability gained him immediate success and promotion. He became a member of the council and secretary of the province. These positions he held when Harvey was appointed governor.

In 1627, and again in 1628, Claiborne received license from governors of Virginia to trade and explore along the shores of the upper Chesapeake, and also in other unsettled parts of the province. In 1629 he was appointed to command an expedition to punish the Indians for ravages which they had committed. As a member of the council Claiborne had been one of those who tendered the oaths of allegiance and supremacy to Lord Baltimore, when he visited Virginia in 1629. The interests which as a trader Claiborne was developing were menaced by the plans of that Catholic nobleman to procure a grant somewhere in the unoccupied regions of Virginia. Claiborne went to England and op-

[1] Md. Arch., Proceedings of Council, 1636–1667, 15–44; *ibid.* Proceedings of Council, 1667–1688, 157–239.

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posed the grant of Maryland by such means as he could command.

Though his efforts in that direction failed, he interested Cloberry and Company, a firm of London merchants, in his schemes, and was appointed their agent. Sir William Alexander also took a hand in the business, and apparently with his assistance Claiborne and his associates, in 1631, procured from the king a license to trade to any part of the North American coast where a monopoly of traffic had not been granted. Early in 1632 Governor Harvey granted Claiborne a license to trade with the Dutch plantations. As the result of this enterprise Kent island was taken possession of and stocked with servants and cattle. It remained in the possession of Claiborne until 1637, but not by virtue of any grant of land or any authority to be there except that which came from the licenses to trade which had been issued by the governors of Virginia.

In the meantime, by a perfectly legitimate exercise of royal power, the territory of which Kent island was a part had been granted to Lord Baltimore and the settlement of it had begun. The Virginians petitioned the king against this grant, but the privy council decided, after hearing the case, that Lord Baltimore should be left to his patent and the other party to the course of the law. The Virginians never instituted suit.[1] Governor Harvey was instructed to give such assistance to Lord Baltimore's colonists in establishing themselves north of the Potomac as lay within his power. He and Governor Calvert met as soon as the first body of colonists reached Virginia waters, and courtesies were duly exchanged. Claiborne was also informed that his rights on Kent island would be protected and his enterprise there encouraged, but he must acknowledge himself a tenant of Lord Baltimore as proprietor.[2] If he wished to trade further along the upper shore of Chesapeake bay, he must procure a license from Maryland.

Claiborne at once submitted this question to his colleagues

[1] Colonial Papers, July 3, 1633. The caption of the order in council as given in Md. Arch., Proceedings of Council, 1638–1667, 21, is wrong.

[2] Calvert Papers, I. 135; Bozman, II. 27.

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in the Virginia council.[1] They had been irritated by the issue of the Maryland charter, because it curtailed their domain. The appearance within the Chesapeake of commercial rivals, and they, too, of the Catholic faith, was anything but welcome to the Virginians. Therefore the council of Virginia expressed wonder that Claiborne should raise the question of recognizing Baltimore as his overlord. They would not surrender their right to Kent island until the validity of Baltimore's claim to it was determined by the king. Meanwhile, however, they would live on good terms with the Marylanders, and expected similar treatment in return. Encouraged by this support, Claiborne refused to acknowledge the superior rights of Lord Baltimore.

Before many months had passed the Patuxent Indians began to grow restive, and when inquiry was made for the cause, the Indians, through Henry Fleet as interpreter, charged Claiborne with having told them that the settlers at St. Mary's were Spaniards and enemies of the English.[2] As Fleet was a rival of Claiborne in the Indian trade, the truth of this testimony is seriously weakened. Later statements of the Indians also tended to invalidate it. But it led to the issue, in September, 1634, of an instruction by Lord Baltimore that, if Claiborne continued his refusal to acknowledge Maryland authority, he should be arrested and imprisoned. A few months later a pinnace belonging to Claiborne, which was trading in Maryland waters without a license from Calvert, was captured. Thereupon Claiborne manned a shallop under Lieutenant Ratcliffe Warren[3] and commissioned him to seize any vessels which belonged to the Maryland government. Upon hearing of this, the Maryland governor sent out two armed pinnaces under Captain Thomas Cornwallis. In the spring of 1635 two encounters occurred between these forces, in the first of which four men were killed and several wounded. Among the killed was Warren, Claiborne's commander.

Virginia was much aroused over this affair, and it doubt-

[1] Md. Arch., Proceedings of Council, 1667–1688, 164; Neill, 100.
[2] Md. Arch., Proceedings of Council, 1667–1688, 165–168.
[3] Bozman, I. 34.

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less contributed strongly toward the resistance which forced Harvey to leave the province. But, though Virginia sympathized with Claiborne, it was forced to send commissioners to Maryland, who assisted in arranging a temporary peace.

Near the close of 1636 George Evelyn[1] arrived in Maryland. He was sent over as the attorney of Cloberry and Company, with instructions to take charge of the settlement on Kent island and to request Claiborne to come to England to explain his doings and adjust accounts. Though Evelyn at first declared his belief that Baltimore was not legally entitled to jurisdiction over Kent island, Claiborne, before he left, in the presence of the servants tried to induce him to give a bond of £3000 that he would not deliver the island over to the Marylanders.[2] But the bond was not given and Claiborne left the island in the hands of Evelyn. The latter, whether led by conviction or interest, soon opened relations with Governor Calvert. The governor appointed him commander of Kent island, and he then tried to persuade its inhabitants to freely submit to the Maryland government. Failing in this, he persuaded Governor Calvert to reduce the island by armed force. This was accomplished in December, 1637, and was accompanied with not a little harshness toward the faithful adherents of Claiborne. Against Claiborne, who was still absent in England, the Maryland assembly passed an act of attainder in March, 1638.[3] All his lands and goods within Maryland were declared forfeited to the proprietor. This was the end of his proceedings in that province until they became merged with the religious and political struggle of the next decade.

In England suit was brought by Cloberry and Company against Claiborne. It came to trial in 1640, but the result does not appear in extant records. Cloberry and Company acknowledged the jurisdiction of Lord Baltimore over Kent

[1] Streeter, The First Commander of Kent Island, Fund Pubs. of Md. Hist. Soc.

[2] This is reported in a long series of depositions, Md. Arch., Proceedings of Council, 1667–1688, 181 *et seq.*

[3] Md. Arch., Proceedings of Assembly, 1638–1664, 23.

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island by serving out warrants against certain debtors there.[1] Claiborne, still pursuing his plans as a trader, petitioned the king that Baltimore might be restrained from interfering with his trade. He also urged that a tract of land extending the breadth of twelve leagues on each bank of the Susquehanna river from its mouth to its source, a grant of which he sought, should also be extended northward to the Saint Lawrence and be prolonged southward from the mouth of the Susquehanna toward the sea. The fact that this grant, if made, would have cut in twain the possessions of the crown, and that it would have given to Claiborne a considerable part of Maryland, sufficiently indicates its extravagant character. Its object evidently was to enable Claiborne to get access to the fur-producing regions of the northwest and to the Indian tribes which dwelt there. All these advantages he hoped to receive for a rent of £50 per year. It is needless to say that this grant was never made, but plans suggested by the proposal were cherished for some years, while with a view to perpetuating his influence in the upper Chesapeake, Claiborne bought Palmer's island from the Indians.

For some years before the crisis in the affairs of Claiborne was reached, a feeling of irritation on the part of Virginians toward Governor Harvey had been growing. This was partly due to the offensive manners and arbitrary conduct of the governor. Owing to the lack of records, we have little first-hand information concerning the details of his misgovernment; but of the fact in general there is sufficient evidence. Appointments under the English government throughout our colonial period were secured largely through privilege, influence, and favoritism. Merit, impersonally considered, played some part, but in a large proportion of cases it was subordinate. In most cases it could be but roughly ascertained, and figured only in connection with motives of a more personal sort. These considerations go far to explain the inferior character of many colonial appointments. They were part and parcel of the British civil service and exhibit its defects. In many cases military and naval officers of inferior rank, or persons who had held lower

[1] Md. Arch., Proceedings of Provincial Court, 1637–1650, 3, 13, 25, 34.

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positions at court or were relatives of some influential nobleman were selected to be governors. In too many cases they lacked the proper experience, or were narrow and selfish in their aims. They too often came for gain rather than service. Sometimes they followed in civil life the methods of the camp or the quarter-deck. Again, while laboring zealously to uphold the legal rights of the crown, they often failed to win the loyalty of the colonists by the pursuit of measures which were clearly for their benefit. On the other hand not a few of the royal governors rendered excellent service both to the crown and the colonists. Of the less acceptable class among them, John Harvey of Virginia was an example.

Previous to his appointment as governor in 1628, Harvey had served in the English navy. He had also been at the head of the commission which was sent to Virginia in 1623 to collect information for the use of the government in its prosecution of the London company. After his appointment as governor, if we are to credit the statements of his opponents, he exhibited the two worst qualities which a governor could possess, greed and an arbitrary temper. He is charged with multiplying fines and levying excessive fees, and even with appropriating money which belonged in the treasury of the province. Already fees had been to an extent regulated by law in Virginia, though this had not been done in the case of those which went directly to the governor. The custom of making appropriation bills specific was already being followed by the Virginia legislature, and in two acts before Harvey's time[1] a general requirement that public moneys should be levied and employed as the assembly directed had found a place. But in neither case do the provisions appear to have been so precise and exhaustive as to have prevented the governor from using his discretion. The complaint of Harvey's opponents that he had refused to account for the expenditure of public money might therefore, if we had the records, be susceptible of an explanation in harmony with law, or at least with current practice.

There is no doubt that Harvey was arrogant and even

[1] Hening, I. 142, 171.

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brutal in conduct, and that at times he tried to play the petty tyrant. He admitted having assaulted one of the members of the council. He was charged with failure to show respect for the votes of the council. It was said that he had reviled the councillors in open court, and had told them that their part was simply to advise, the decision resting wholly with himself as the representative of the king. Finally, he had detained the original of a letter which the council was sending to the king to protest against one of the proposed tobacco contracts,[1] though he did send a copy. In his letters home Harvey complained of the powerlessness in the council to which by the terms of his commission[2] he was condemned, and he was probably attempting by assumption of power to escape from that condition. A man of his character would have found limitations, even if he had possessed the power which belonged to royal governors in later times. But in his treatment of Dr. Pott, his predecessor, who was found guilty of retaining some cattle which did not belong to him and also of having pardoned a murderer, Harvey showed a sense of fairness and justice. He sent a petition to the king that Pott, though his estates were justly forfeit, might yet be pardoned. The reasons assigned were his long residence in the province, his penitence, and the value of his services as a physician. The petition was successful and the pardon was duly issued.[3]

When, in May, 1635, news came of the defeat of Claiborne's force by Thomas Cornwallis, the accumulated grievances of the Virginians against Maryland and against Harvey, both as governor and as the patron of Maryland, became too heavy for longer endurance. For some time past those who had ventured to speak well of Maryland had

[1] Captain Mathews also charged Harvey with holding back a letter from the king relating to a tobacco contract. This may have referred to a proposed contract for the negotiation of which one Stoner had lately been sent over by the king, but had died on the voyage. Colonial Papers, 1574–1660, 190, 195, 208.

[2] Harvey states that his power in Virginia was not great, as he was limited by his commission to "the greater number of voices at the council table." Va. Mag. of Hist. VIII. 161.

[3] Neill, 79; Hening, I. 145; Colonial Papers, May 29, July 16, 1630, July 25, 27, and August 20, 1631.

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been regarded almost as criminals. Planters had explained that they had rather knock their cattle on the head than sell them to Marylanders. Captain Samuel Mathews, on receiving what was presumably unfavorable news from England concerning Claiborne's suit, is reported to have thrown his hat upon the ground and, stamping in fury, to have exclaimed, "A pox upon Maryland!" When Governor Harvey removed Claiborne from the secretaryship and put Kemp in his place, Rev. Anthony Panton is said to have called the latter a "jackanapes," and to have told him that he was unfit for the place of secretary. Harvey knew of many conferences being held by the foes of Maryland, of many letters being sent to and fro, but unlike some New England governors under similar circumstances, he respected the secrecy[1] of the mail.

On April 27 a meeting was held at the house of William Warren in York, when speeches of protest against the misgovernment of Harvey were made. The next morning Captain Nicholas Martin, Francis Pott — a brother of the doctor, — and William English, sheriff of York, were arrested on the governor's[2] warrant for the share which they had taken in the meeting. When they asked the reason for their arrest, they were told, in language which reminds one of the utterances of Governor Berkeley forty years later, that they should know at the gallows. When the council met the governor declared that the prisoners should be proceeded against by martial law, but the councillors insisted that they should have a legal trial. Harvey then became very angry, and after sitting down and bidding the councillors be seated, put to them the question, "What do you think they deserve that have gone about to persuade the people from their obedience to his Majesty's substitute?" An immediate answer was required. The first individual to whom the question was directly put was George Menefie. He replied sarcastically that he was only a young lawyer and dared not

[1] Md. Arch., Proceedings of Council, 1636–1667, 30.

[2] The letter of Captain Mathews and the declaration of Governor Harvey concerning the "meeting of 1635" are in Va. Mag. of Hist. I. 416–430. See also Neill, 116.

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"upon the sudden" deliver his opinion. William Ferrar and Captain Mathews then objected to the proceeding of the governor as strange and unprecedented. Mathews compared it to the accusation by Richard III against Lord Hastings before the council. After this the rest of the councillors found their voices, and opposed the governor's course. "Then followed many bitter languages from him [the governor] until the sitting ended."

At the next session the governor sternly demanded the reason why a petition against him had recently been drawn in the province. Menefie replied that its chief cause was the fact that letters which had been prepared for the king had been detained. Upon this the governor, rising in a rage, struck Menefie on the shoulder, exclaiming, "I arrest you for suspicion of Treason to his Majestie." Captain Utie, who stood near, said, "And wee the like to you, sir." "Whereupon I," writes Mathews, "seeing him in a rage, took him[1] in my armes and said, 'Sir, there is no harm intended against you, save only to acquaint you with the grievances of the Inhabitants, and to that end I desire you to sitt down in your chayre.'" Then Mathews stated to him what the grievances were, and asked that they might in some way be redressed. Mathews and the other councillors told Harvey that he must go to England and answer complaints which would be made there against him.

In the midst of these occurrences, on a signal from Dr. Pott, the governor's house, where the council was sitting, was surrounded by armed men. The three men whom Harvey had arrested were now released. The governor found his protests of no avail. So imminent seemed the danger of personal injury to him that a guard was appointed. The council also took possession of his commission and instructions. The burgesses of the late assembly were called together by the insurgents. When the burgesses met, they approved the doings of the council, and recorded the fact that Sir John Harvey was thrust out of his government. Captain John West was chosen to act as governor until the king's pleasure was known. Charges were formulated against

[1] See also Va. Mag. of Hist. IX. 34.

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Harvey, and their conveyance to England was intrusted to Francis Pott and Thomas Harwood. Harvey sailed on the same vessel with them.

In July, 1635, Harvey and his two accusers landed at Plymouth. But so tumultuous and extraordinary had been the proceedings in Virginia, that the arrest of Pott and Harwood at Plymouth and their detention at the instance of Harvey should not awaken surprise. Harvey proceeded to London and submitted a statement in his own defence to the commissioners of foreign plantations.[1] In the following December the case was heard by the privy council, the king being present.[2] Before the hearing began the king declared that the expulsion of the governor was an assumption of royal power, and that it was necessary to send him back if he stayed but a day. Harvey denied several of the charges which had been made against him, though he admitted that he had assumed the power to make and remove councillors. No one appeared against the governor, — Pott being still in prison, — and after Harvey had remained in England eight or ten months, he returned to Virginia. West, Mathews, Utie, Menefie, and Pierce, the leading accusers of the governor, were summoned[3] to England to answer charges before Star Chamber. After a detention there for a year or more without trial, they were allowed to return under security for good behavior.

Harvey continued to hold the office of governor in Virginia until 1639. During those years Secretary Kemp was closely associated with him in the management of affairs. The two were still the objects of many loud complaints, and, if reports are true, were guilty of some arbitrary acts. The Rev. Anthony Panton, minister of the parishes of York and Kiskiack, because he made some contemptuous remarks about the secretary, and perhaps in other ways had offended both him and the governor, was severely punished by them. Both his property and his parochial dues were seized, and he was banished from the province under threat of the death penalty if he ever returned. The Virginia merchants also

[1] Colonial Papers, July, 1635.

[2] *Ibid.* December 11, 1635.

[3] Va. Mag. of Hist. IX. 179, 180, 267–269.

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complained against Harvey and Kemp because they collected certain fees and a powder duty. The fees consisted of 6*d.* for every passenger who was landed in the province and 2*d.* for every hogshead of tobacco that was exported. They were used for the payment of the officers who kept the lists of exported commodities, the registrar of immigrants, and him who administered to the immigrants the oaths of supremacy and allegiance. The officer in each case was Kemp himself, or some one connected with his office. Complaint was also made because Jamestown was declared the only port of entry, though not of clearance. From these charges, however, the governor and secretary were able to clear themselves by showing that they had acted in accordance with some law or instruction.[1] But both of these officials were believed to be seeking their own interests rather than those of the province. Panton, the banished clergyman, carried his case on appeal to the privy council,[2] and upon its consideration facts were doubtless stated which revealed the arbitrariness of Harvey and some of the councillors. We know also that the other charges were submitted to the ministers in England, and that Harvey and Kemp presented a long defence. But the government determined to recall Harvey, and appointed Francis Wyatt to fill his place. Wyatt and his council were ordered to inquire into the case of Mr. Panton in Virginia. This they did with the result that Panton was reinstated in his living and full restitution of his property was made. Kemp left Virginia for a time, but in Berkeley's administration he was restored to the office of secretary and on one occasion was acting governor.[3]

Wyatt's second term of two years passed without notable event. In 1641 Sir William Berkeley was commissioned as governor, and held the office for ten years, when, as the result of the submission of the province to the commissioners of parliament, the government was reorganized. Berkeley was an Oxford graduate, and, though in no sense

[1] Va. Mag. of Hist. III. 21–34; IX. 175, 176, 177; XI. 46, 56; Colonial Papers, January 18, 1639.

[2] Colonial Papers, January 18, and August 10, 1639.

[3] Va. Mag. of Hist. V. 123–128; XI, 50, 170; Neill, Virginia Carolorum, 184.

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a scholar or a patron of learning, was a man of sound practical judgment. He had been connected with the court of Charles I, and was a strong supporter of the royalist cause. He discouraged efforts of certain New England ministers to settle in the Nansemond region, and in the end coöperated in the removal of a considerable body of Puritans from that district to Maryland. Under the lead of the governor, Virginia was kept steadily loyal to the cause of the king, while by his loyalty the success of Berkeley as an executive was enhanced. Virginia never had a more popular or successful governor than was Berkeley during this administration.

With the appointments of Wyatt and Berkeley, Virginia may be considered to have attained substantially its full development as a royal province. The commissions and instructions which were issued to these governors, especially those of Berkeley, were much more complete than any which had preceded them, though they did not change the relation in which the chief executive stood to his councillors. That was left to be effected after the Restoration.[1] But in these documents a comprehensive plan was sketched for the guidance of the executive. He should not permit any to settle in the province unless they took the oaths of allegiance and supremacy. He should foster and support worship according to the forms of the Established Church, should exercise care in the appointment of ministers, should see that houses were built for them and glebes provided. Good morals should be promoted, especially by the suppression of drunkenness and regulation of the import and sale of strong waters. Justice should be administered, both in the quarter courts of the governor and council and in the county courts, in accordance with the forms of the English tribunals. Offending councillors might be brought to justice before the quarter courts or before special sessions of the council. Assemblies should be called annually, while by the exercise of the veto and in other ways the governor should keep their legislation in proper conformity with that of England. To the governor should belong the appointment of all officials below the rank of councillors, the captain of the fort, the muster master

[1] Va. Mag. of Hist. II. 281; XI. 50–57.

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general and surveyor general. As an indirect form of reward for their services, every councillor, together with ten of his servants, was exempted from taxation, save in case of a defensive war and of contributions for the building of towns and churches and for ministers' dues. This was a feature of the system that was peculiar to Virginia, and in the end it was destined to have unfortunate effects.

The governor was to see that the obligation of the assize of arms was fully enforced by the muster master general; that the colonists were properly trained, and that a garrison of ten men be stationed at Point Comfort. The limits of age for military service were fixed, as in most of the other colonies, at sixteen and sixty, and newcomers were for the first year exempted from all service except the defence of the places where they dwelt. Provision was made for a system of alarms, while intercourse with the Indians was to be strictly regulated, partly as a means of defence. Special care should also be given to the regulation of trade and industry. The building of towns should be constantly encouraged. Unimproved lands should be regranted to actual settlers. Constant effort should be made to diversify the industry of the province by restricting the growth of tobacco and encouraging the production of corn, wheat, hemp, flax, pitch, tar, the wine and silk industries, and the raising of cattle. In order to avoid forestalling and engrossing, ships were not to be allowed to break bulk until they reached Jamestown. Intercourse between colonists and the crews of merchant vessels at that port were to be regulated by license. Trade with the vessels of foreigners was forbidden, save in extremity. In the case of all exports from Virginia, bond must be given that they would be landed within the king's dominions; in the case of foreign vessels, that they be landed at the port of London.

Not perfectly, but, as the times went, with a fair degree of fidelity, the Virginia executive adhered to this programme. In doing so he was supported by the legislature, in whose enactments detailed provisions will often be found for the enforcement of the principles which were set forth in the royal instructions.

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CHAPTER V

COLONIAL POLICY DURING THE INTERREGNUM

THE period of twenty years which passed between the beginning of the Civil War and the restoration of the kingship falls into two parts of equal length. The first comprised the eleven years between the opening of the struggle and the establishment of the Protectorate. The second — somewhat shorter than its predecessor—coincided with the Protectorate itself and with the collapse of that institution, followed, as it was, by the return of the survivors of the Long Parliament and by the changes which preceded the recall of Charles II. When the measures and policies which characterized those two intervals of time are compared, a marked distinction between them will appear. The former may be roughly characterized as destructive, the second as constructive. The first decade was occupied with the Civil War in England, with the reduction of Ireland and Scotland, with the abolition of the kingship and of the House of Lords, with the early and crude efforts of the Rump Parliament to conduct the business of the nation alone. This was the destructive stage of the Puritan revolution. By it the continuity of English administration was broken. The plans of the king and his ministers were interrupted. The English executive, as it had been organized of old, fell into ruin. Administration, so far especially as it affected foreign and colonial affairs, was relaxed. The attention of all parties was for the time concentrated on the great struggle which was in progress at home. Many of the old ruling families were thrust into the background. New men rose to prominence and strove eagerly for place and wealth. It was a time of change, of unwonted freedom of movement, in both the economic and political spheres.

But after the king and his supporters had been humbled and the enemies of parliament in all the three kingdoms had been subdued, the necessity of welding the fragments

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together into a new and, if possible, a permanent governmental structure became apparent. Then began the constructive period of the revolution. As an incident of the struggle, the first stage of which was just closing, the parliament had been changed almost beyond recognition. Now it needed thorough reform. A new executive must be also developed to take the place of the king and of the various officials who surrounded him. And, finally, the executive and the parliament must, if possible, be made to work together harmoniously. The institution which was developed to meet this need was the Protectorate. It was a reorganized executive, created to fill the void left by the fall of the kingship and to give that degree of unity and permanence without which government is not possible. The personality of Oliver Cromwell found expression in the Protectorate, as it had done in the later stages of the Civil War. With the support of army and navy he, as far as it was possible, gave inspiration to the executive, conciliated the national spirit by means of a succession of parliaments, and laid the foundations of a foreign and colonial policy. Only a beginning was made; after his death the structure which he had labored so heroically to raise fell to pieces. Certain elements, or suggestions, however, survived. These, when viewed in connection with Cromwell's immediate projects, enable us, especially in colonial relations, to distinguish the Protectorate from the decade which preceded and to connect it also with the period that followed. In the present chapter an effort will be made to exhibit in their relations the chief features of colonial development during the transition period of twenty years, which is perhaps best described by the single word Interregnum.

During the early years of the period the parliament was the immediate source of authority and was universally recognized as such. It assumed the functions which had been discharged by the king, while it also retained its accustomed legislative powers. This affected its relations with the colonies equally with those it bore to the realm. The parliament, whether in the form of two houses as they existed during and after the war, or as the later Rump, was now not

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merely the source of statute law, so far as it affected the colonies, but of executive action and control as well. The administrative officials and boards now became directly or indirectly the appointees of the parliament, and the way was opened for a more continuous and intimate relation between that body and the colonies than had previously existed. The reception which this change met in the colonies, as well as its bearing on their fortunes, varied with the attitude which the colonists bore toward the parties that were contending in England. The first act of the Long Parliament which affected the colonies was the appointment, in November, 1643, of six lords and twelve commoners as a board[1] of commissioners for plantations. At the head of this board, with the title of governor-in-chief and lord high admiral of the plantations in America, was the Presbyterian peer, Robert, Earl of Warwick, who since the previous summer had been admiral of the fleet. He was the same Warwick who, years before, had been so deeply concerned in the affairs of the Virginia company. Prominent among his associates were the Earl of Manchester, Viscount Say and Sele, Philip Lord Wharton, the younger Vane, Hazlerigg, Pym, Cromwell, and Samuel Vassall. This body took the place which had been held by the king's board of commissioners, with the archbishop of Canterbury at its head. The powers which were given by ordinance to this board were by no means equal to those which had been held by the commission of 1634, yet they extended to the appointment and removal of governors, councillors, and other officials, as well as the securing of information concerning the colonies by means of testimony and the use of colonial records. The commissioners were also authorized, when fit occasion arose, to transfer some part of their authority to the officials who were appointed by the proprietors of the colonies or chosen by their inhabitants. Of this in some cases they availed themselves, when the disturbed conditions in England dictated; and, as a result, the colonies enjoyed unusual freedom.

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Especially was this true of New England. The leading members of the new plantation board, especially the peers,

[1] Hazard, Hist. Colls. I. 533; Colonial Papers, Nov. 24, 1643.

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stood near to the Puritan colonies and were disposed to lend a ready ear to their demands. The comfortable assurance of this fact was felt in New England, as the issue of the Body of Liberties by Massachusetts and the formation of the confederacy testified. England and New England were now moving in nearly parallel lines, and a spirit of sympathy existed between the dominant parties in each. At the same time the Puritan colonies were ready now, as ever, to stand on their chartered rights, as was evidenced by the attitude of Massachusetts on two occasions, in 1644, when conflicts were threatened in Boston harbor between vessels which bore respectively the colors of parliament and of the king. In the former instance a Bristol ship was taken by one Captain Stagg, who, for his act, showed a commission from the lord high admiral, the Earl of Warwick, reciting also an ordinance of parliament authorizing him to take prizes. In the second instance the Massachusetts officials took a Dartmouth vessel under protection to save it from capture, alleging that the captain who sought to take it had no right to do so because his commission, though granted by Warwick, mentioned no ordinance of parliament, and was not under the great seal. These cases, especially the former, provoked considerable discussion, the clergy participating. The magistrates and elders concluded not to compel Captain Stagg to restore his prize, because, by so doing, Massachusetts might lose the support of parliament, which was its only friend in Europe, and also because through the burgesses of East Greenwich they were represented in parliament, and, if they denied the authority of parliament over them, they would be denying the foundation of their government by patent. Though not subject to appeals, they admitted that they were not absolute without parliament, nor free "in point of state."[1]

Virginia and some of the island colonies took the opposite attitude of pronounced hostility to the new régime. But until comparative quiet came in England, they were left as free in their hostility as New England was in its sympathy.

[1] Winthrop, II. 222–225, 238-240; Doyle, Puritan Colonies, Eng. ed. I. 367; Mass. Recs. III. 31.

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It was during these years that the natural tendency, already operating, to trade freely with the Dutch and other foreigners, both in America and in Europe, was strengthened; while the spirit of colonial independence bore fruit in the issue of the Massachusetts coinage.

The outbreak of the Civil War checked a large flow of emigration to New England, while it attracted back to England some of the colonists who were ready to serve parliament either in war or in civil pursuits. In the autumn of 1642 the peers who later became members of the plantation board, with a considerable number of members of the commons and ministers, had written to the clergymen,[1] Cotton, Hooker, and Davenport, urging them to return with all speed to England to assist in the "seatlinge and composing the affaires of the church." Though the Westminster Assembly did not meet until the following July, plans for such a work as it undertook were already under discussion. No one of the New England clergy risked the peril of becoming entangled in English ecclesiastical politics by accepting this invitation. But as soon as the board of commissioners for plantations had been appointed, Peters and Welde, who for two years had virtually been acting as agents of Massachusetts, attempted to procure for that colony the grant of the Narragansett region, to which reference has already been made.[2] But the scheme failed, and in March of the following year, in response to the petitions of Roger Williams, the commissioners granted their first charter to the Narragansett plantations.

The service which Williams rendered during this visit to England was far greater than any duty which was immediately connected with his position as agent. It made his agency unique, for by it the liberalizing tendencies of the Old and New World were for the moment brought into cooperation, and some of the highest products of Puritan literature owed their existence to the union. Williams made the acquaintance of Cromwell and Milton, while he helped permanently to strengthen the interest of Vane in

[1] Hutchinson, History of Massachusetts, ed. 1795, I. 111.

[2] Vol. I. Pt. II. Chap. VIII.

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the fortunes of the struggling settlements about Narragansett bay. With these men Williams joined in a common effort to advance the cause of liberty both within the Westminster Assembly and outside. He published at this time his *Bloody Tenent of Persecution* and *Queries of Highest Consideration*, in which his views on the subject of soul liberty for the first time found full expression. The reply of the Massachusetts Puritans to all utterances and movements of this kind was made in part by the publication of the official account of the Antinomian controversy under the title of *A Short Story of the Rise, Reign and Ruine of the Antinomians*.[1] In this they tried to show by a conspicuous example the baleful effects of dissent, and of its attempted toleration.

After the death of Miantonomi and the release of the Gortonists from imprisonment in Massachusetts, the Narragansett chiefs, Pessicus and Canonicus, as we have seen, in April, 1644, signed a paper declaring that they put their tribe and the entire Narragansett country under the protection of the king of England. In the course of 1645 Gorton, Holden, and Greene appeared in London for the purpose of securing a hearing before the commissioners in reference to the conflicting claims to the Narragansett country. In this they were successful, and Holden returned to New England with an order that they should be permitted hereafter to dwell quietly at Shawomet, and that the region about Narragansett bay lay wholly outside the bounds of the Massachusetts patent. The commissioners also required that the Gortonists should be given free passage through Massachusetts on their return. This favor was grudgingly conceded by the authorities at Boston.[2]

This message at once set the general court of Massachusetts deliberating over the question, whether or not it was under the jurisdiction of the commissioners and should give them their title. As usual, the ministers were consulted, who expressed themselves as opposed to acknowledging the title

[1] Adams, Antinomianism in Massachusetts Bay, Publications of the Prince Society.

[2] Arnold, I. 190, 193; Winthrop, II. 342 *et seq.*

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of the commissioners or the right of hearing appeals which it implied. They would not submit to hearings in England "further than in a way of justification of our proceedings questioned, from the words of the patent." "No appeals or other ways of interrupting our proceedings do lie against us." If the parliament should be less inclinable to them than this implied, then the colonists "must wait upon Providence" for the preservation of their just liberties.[1]

At the time when Gorton was making his appeal to England, Dr. Child and his Presbyterian friends were attempting to do the same. Massachusetts, as has been shown in a previous volume, not only denied their right to do this, but did all that she could to thwart them. The sharp controversy which was then in progress between the Presbyterians and the Independents in Old as well as New England, and the fact that for the time the Presbyterians controlled parliament, doubtless increased the natural reserve of the Puritan colonies. But the combined efforts of Gorton and the Presbyterians forced the colony to depart somewhat from its proud isolation and from the declaration of principles which has just been referred to. Massachusetts appointed Edward Winslow as her agent in England to assist in counteracting their plans.[2] Winslow went fully commissioned and instructed, both as to the claims which Massachusetts advanced to Shawomet as the consequence of Pumham's submission, and concerning the nature of Massachusetts government as the leaders of the colony understood it to be. It was Winslow's second journey across the ocean as agent, and from it he never returned to New England.

When, in 1647, Winslow arrived in England, Gorton had been there for more than a year. He had just published his *Simplicitie's Defence*, which contained his account of his own conduct and his arraignment of Massachusetts. To this Winslow issued a reply under the title of *Hypocrisie Unmasked*, and this he dedicated to the commissioners. He requested them never to permit Gorton to return to New England. He also urged that they should not entertain appeals from New England, and that they would con-

[1] Winthrop, II. 344, 345. [2] *Ibid.* 359–367.

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firm Plymouth in the right which by patent it claimed to Shawomet. Though these demands were not granted, the commissioners declared that they did not intend to encourage appeals and would not limit the due and legal freedom of any of the New England colonies. As the result of a hearing the commissioners rejected the appeal to interfere authoritatively on behalf of the Gortonists. They also ignored the arguments of Massachusetts which had their origin in the alleged heresy of their opponents. Pending an ascertainment on the spot of the boundaries of the disputed tract, they contented themselves with an injunction that the Gortonists be permitted to live where they had settled, so long as they conducted themselves peaceably.[1] Under this guaranty Gorton returned in 1648 to New England, and was allowed without molestation to pass through Massachusetts to the Narragansett country.

These were the only dealings of importance which the New England colonies had with the authorities created by parliament until after 1650. They concerned chiefly the Narragansett settlements. This reveals the fact that those settlements, largely because of the conflicting territorial claims which had arisen to the country, were a centre of disturbance that might at any time call for the interference of the home government. They furnished one of the avenues by which the crown and its officials were likely to gain access to New England.

The outbreak of the Civil War, on the other hand, furnished the occasion for the renewal of disturbances in Maryland. The enemies of the Calverts availed themselves of the precarious hold which, as Catholics, Lord Baltimore and his family in those disturbed times had upon their province, to advance their claims. The conflicts which resulted brought the affairs of Lord Baltimore repeatedly before the home government, in the form of suits before the admiralty court and in many other ways. The sympathies of the family were naturally with the king, and Governor Leonard Calvert, who returned on a visit to England in 1643, was charged with having received a commission from the king

[1] Winthrop, II. 387–390, 392.

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at Oxford to seize[1] the persons and ships of the parliamentarians. But their position made it necessary that the Calverts should be very cautious, and they were careful to avoid coöperation with either one of the English parties. Their province, however, was not saved by this caution from serious disturbances, in the course of which the proprietors' authority was for a time suspended.

Early in 1644, while Governor Calvert was still absent, Richard Ingle came with a merchant ship to load at Saint Mary's. Because of alleged treasonable utterances of his against the king, Ingle was arrested. But Thomas Cornwallis soon interfered, caused the release of Ingle, and the latter sailed away, though without paying his debts. For the assistance which they rendered him, Cornwallis was fined and another councillor was removed from office. The next year Ingle appeared again, and offered security for his appearance to answer all charges against him. But again he got clear, this time taking Cornwallis to Europe with him. Cornwallis never again returned to Maryland.[2]

Meantime Claiborne, who had been appointed treasurer of Virginia by the king, was secretly trying to recover possession of Kent island. The province was full of disquiet. Governor Calvert returned in the autumn of 1644, and attempted to restore peace. But before anything decisive had been accomplished Ingle appeared again, this time with authority of some sort from parliament, which he said was embodied in letters of marque. He also brought goods to the value of £200 which belonged to Cornwallis. These Ingle sold and pocketed the returns. He then joined with Claiborne in an attack on Saint Mary's. Governor Calvert was forced to flee to Virginia. The province fell into the hands of the insurgents and remained under their control for two years. Cornwallis's plantation, the finest in Maryland, was plundered, and many other outrages were committed. In 1646 the affairs of Ingle and his relations with Cornwallis came before the house of Lords, and an ordinance passed that house to make void Baltimore's patent. There is no proof, however, that it passed the Com-

[1] Md. Arch., Proceedings of Council, 1636–1667, 164. [2] *Ibid.* 160–167.

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mons. But Ingle, it seems, appeared before a committee of parliament in opposition to the continuance of government in the hands of Baltimore. Baltimore, however, again recovered possession of the province, and after the death of his brother Leonard, the elements of opposition were for a time quieted by the appointment, in 1648, of a Protestant, William Stone, as governor. Thus affairs rested until the authorities in England seriously took in hand the settlement of relations between the colonies at large and the new government.

With the execution of the king and the establishment of the Commonwealth came a great change in the organization of the executive boards in England. Then it was that the spirit of the innovators fully triumphed. The privy council, with the office of secretary of state, had already disappeared. The council of state, consisting of about forty members, was now created by parliament and intrusted with executive power. As the standing executive council, subject to periodical renewal,[1] it bore a relation to the whole sphere of administration, the colonies included, which was similar to that of the privy council. It was, however, immediately responsible to the parliament, and, so long as the Rump Parliament existed, the relations between it and the council of state were especially close. But the most striking change which followed the advent of the Commonwealth was the increase in the number and activity of committees. The parliament had several standing committees, those of foreign affairs, on Irish and Scotch affairs, on America, on trade and plantations. Special and more temporary committees were appointed to consider the affairs of Newfoundland, of the Somers islands, and later the affairs of Jamaica; to purchase supplies for the fleet, to specially consider trade and navigation. The council of state, which was made up chiefly of members of parliament, also did its business largely through committees, standing and special. Among its committees appear that on the admiralty, on trade, on plantations, on

[1] The council of state was appointed under successive commissions, at first for a year and later for six months. By the close of 1653 eight commissions had been issued.

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trade and foreign affairs, on trade, plantations and foreign affairs combined. The business of the latter, which was active during the later months of the Commonwealth, was voluminous. On a few occasions, in 1650 and 1651, the whole council, or any five of them, was declared to be a committee for trade and plantations.

With the establishment of the Protectorate, at the close of 1653, the title council of state was dropped and that of lord protector's council was assumed, to be changed later to privy council. With the collapse of the Protectorate and during the few months before the Restoration the name council of state reappears. But under the Protectorate the committee system was somewhat curtailed, and did not again reach the dimensions which it assumed during the Commonwealth.[1] Under the Protectorate the council seems to have made use of special committees, as did the privy council under the monarchy, and probably in greater number; but they did not keep separate minutes and therefore in their case business seems more closely bound up with that of the council. The executive or monarchical element in the constitution was again being strengthened. Parliament again fell relatively into the background. A colonial policy was developed, which was the result of the thought and activity of Cromwell and his immediate advisers. This phenomenon was in marked contrast to the mere drifting of the previous decade, and serves to bring the Protectorate into intelligible relations with early Stuart and Elizabethan times on the one side and with the period of the Restoration on the other.

The news of the execution of the king was received in some of the colonies, notably in Virginia and Barbadoes, with declarations of abhorrence or preparations for revolt. In the former province there was naturally a considerable body of colonists who sympathized with the cause of parliament. But the volume of loyalist feeling, which was always strong, had been increased by the arrival from England of

[1] The record of these changes, with the minutes of the most important committees of the Commonwealth, appears in State Papers Domestic, Interregnum, 11 Vols. The general nature of the system is explained by the editor, Mrs. Green, in the volume for 1649–1650.

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refugees of the Cavalier party, whose social rank might easily give them greater influence than their numbers would entitle them to. In Accomac the royalists were especially strong, and their presence led to action of a most interesting character, when the body of the province resolved to submit to parliament and keep the peace. This in the end proved to be the feeling of the mass of Virginia people. It was felt that the province could not afford to become involved in the conflict. The assembly of Virginia, however, at first forbade the use of argument in any form in defence of the execution of the king. In the earnestness of their loyalty they acknowledged the young Charles Stuart as the rightful successor to the throne, and a commission [1] for a new council was secured from him. In Barbadoes, under the lead of the proprietor, Lord Willoughby of Parham, the new government in England was defied, the young prince was acknowledged as king, conventicles were suppressed, supporters of the Commonwealth were banished or otherwise punished, freedom of trade with all nations was claimed, and it was charged that a plan was entertained to make the colony [2] a free state. In Antigua and the Bermudas [3] similar conditions existed, accompanied in the case of the latter colony by much internal strife. Because of misgovernment and an inclination to invite over Charles Stuart, the governmental powers of the Somers islands company were temporarily suspended in 1653. These events show that in colonies whose sentiments were strongly royalist the tendency toward independent action was strengthened by the Civil War and the establishment of the Commonwealth. Among their population the spirit of revolt against Puritan control was strong, and it was made stronger by the arrival of fugitive Cavaliers. It was for this reason that the condition of these colonies soon demanded the attention of the Cromwellian government, while New England received the most friendly assurances from the Protector.

[1] Hening, Statutes, I. 359; Neill, Virginia Carolorum, 211. See similar action by Northampton county, W. and M. Coll. Quarterly, I. 189.

[2] Colonial Papers, Nov. 20, 22, 1650; June 30, 1652; June 25 and 28, 1653; Oct. 7, 1656.

[3] *Ibid.* Sept. 10–19, 1650; March 17, 1651; Sept. 7, 1658.

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Early in 1649 the condition of Virginia, as well as that of the other colonies to which reference has been made, came before the council of state. The mention of Virginia almost necessarily suggested Maryland, and, had there been danger of its being forgotten, the persistent remonstrances of Ingle would have made such neglect difficult, if not impossible. It was before the committee of the admiralty, of which Sir Henry Vane, the younger, was the head, that the affairs of all these colonies came; while a committee of merchants who were engaged in American trade stood ready with information and advice. A letter of inquiry from the council of state to Governor Berkeley in reference to the banishment of the Puritans of Mr. Harrison's flock from Nansemond county furnishes an express reminder, if such were needed, that religion also played its part among the issues.[1] On December 28, 1649, and again on the 9th of the following January, the admiralty committee listened to Maurice Thompson, Benjamin Worsley, William Penoyer, and other merchants, and considered their representations, along with other papers relating to Virginia and Maryland. The wisdom of appointing a commission to reorganize the government of Virginia on the basis of fidelity to the Commonwealth became at once apparent, and the attorney general was asked to draft a grant in which the ancient limits of Virginia should be expressed. This seemed to imperil the existence of Maryland. But Lord Baltimore was active, and during a succession of hearings and postponements the affairs of that province were kept at intervals before the council and committee till the beginning of May. Then Mr. Worsley was ordered to go to the attorney general and ask him for the patent or commission relating to Virginia which he was requested to prepare. Three weeks later we are informed that the draft of an act for the settlement of the affairs of Virginia was to be presented to the council of state and by it to be laid before parliament.[2]

But before further steps affecting Virginia were taken, reports came that Barbadoes was being put into a posture

[1] Colonial Papers, March 15, 1649, and the entries beginning October 11, 1649. [2] Cal. State Papers, Dom., May 21, 1649.

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of defence against the Commonwealth. The attitude of Virginia also seemed so hostile, that ships were allowed to go thither, only on their masters and owners giving bond that, while there, they would not place themselves under the command of any fort or castle or in any way serve the enemies of the Commonwealth. On August 30 the committee of admiralty ordered Dr. Walker to take the papers concerning Barbadoes into consideration and prepare a bill to be introduced into parliament for the prohibition of trade to that island. A plan was also to be reported to the council of state for an armed expedition to Barbadoes and the appointment of a commission for its regulation. Meanwhile all ships going thither were stayed, and somewhat later that order was extended to ships bound for the Caribbean islands, the Bermudas, and Virginia. A similar extension was also made of the provisions of the proposed bill, and before it was ready for introduction in parliament, it was considered by President Bradshaw, Lord Commissioner Lisle, the judges of admiralty, and others. The bill passed parliament, October 3, 1650.[1]

The act of 1650 prohibited trade with Barbadoes, Antigua, the Bermudas, and Virginia, because of their rebellious attitude toward the Commonwealth government in England. Though the provisions of the act were in their nature temporary and were intended to apply to only a few colonies, the declaration of power in the preamble was general. In the clearness and fulness of its statement of the right of parliament to legislate for the colonies it is comparable with the acts of 1696 and 1766 relating to the dependencies and to that of 1719 relating to Ireland. Its language was: "Whereas the islands and other places in America, where any English are planted, are and ought to be subject to and dependent upon England and both ever since the planting thereof, have been and ought to be subject to such laws, orders and regulations as are and shall be made by the

[1] Colonial Papers, entries from June to October, 1650; Scobell, Acts and Ordinances, II. 132; Hazard, Hist. Colls. I. 559, 636. The proceedings in parliament are in Commons Journals, VI. 474, 478. The bill, after being twice read, was referred to the committee of the navy, from which committee it was reported back for final passage.

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parliament." It declared those who had been concerned in acts of rebellion to be traitors and forbade them to have commercial relations with any part of the world. It also empowered the council of state to send ships to any of the plantations aforesaid, commission such persons as it saw fit, and through them enforce the obedience of all who stood out in opposition to parliament. Pardons might also be granted, and the said colonies preserved in peace until the parliament should take further order. Under the authority of this act Sir George Ayscue, Daniel Searle, and Captain Michael Pack were appointed commissioners for reducing the island of Barbadoes, with additional instructions for the reduction of the other colonies which were found to be in revolt. Virginia and, as the event proved, Maryland were thus included in the general scope of the commission.[1] Four men of war and three armed merchantmen were put under the command of Ayscue for the expedition. After some resistance, followed by an agreement with Lord Willoughby, the island was reduced to submission. Searle, after the departure of Ayscue, became governor. At the time of the reduction Colonel Thomas Modyford, a Barbadian, member of the governor's council and afterwards himself governor, made the interesting suggestion that the island might be represented in parliament.[2] As parliament was then admitting representatives from Scotland and Ireland, the suggestion was timely, if ever it could be so. But the articles of surrender were approved by parliament, and Modyford's idea, after appearing for a moment on the surface of things, straightway sank again into the limbo of the impractical.

In connection with the reduction of Virginia, William Claiborne found his last and greatest opportunity. Ingle had failed by his complaints to convince the parliament that Lord Baltimore's powers of government should be withdrawn. But what Ingle failed to do Claiborne accomplished. He secured an appointment with Captain Robert Dennis, Richard

[1] Colonial Papers, February 1, 1651, and succeeding entries; especially the entries for June and July, November and December, 1651, and that for February 18, 1652.

[2] *Ibid.* February 16, 1652, August, 1652.

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Bennett, and Thomas Stagg,[1] as a member of the commission for reducing Virginia to obedience.[2] In the instructions the designation of Virginia was broadened into "all the plantations in the Bay of Chesapeake." This brought Maryland within the purview of the commissioners. As provided in the instructions which were given to Ayscue, they might use force, if it was necessary, in the reduction of the provinces, going so far as to raise troops in the colonies at large for the purpose. They were to administer the engagement of fidelity to the Commonwealth of England, and were to proclaim as in force in the colonies the several acts of parliament against the king and house of Lords, as well as those for the subscription of the engagement and for the repeal of the acts which required the use of the Book of Common Prayer. Those who had taken the engagement might be elected burgesses and hold office. The commissioners should cause all writs and processes to run in the name of the Keepers of Liberties of England. Bennett and Claiborne, the only two commissioners who concerned themselves much with either Virginia or Maryland, were not slow to take possession of Lord Baltimore's province. Provision was made in the commission that, if Ayscue should finish his affairs in Barbadoes in time, and arrive at Virginia while the other commissioners were occupied there, he should take his place at the head of the board. But he did not appear. It was also provided that if, for any reason, Captain Dennis — who seems to have been intrusted with the command of the vessels — should be unable to act, Captain Edmund Curtis should take his place. As Dennis and Stagg perished before reaching Chesapeake waters, Curtis acted there in the place of the former, and in conjunction with Bennett and Clai-

[1] It is conjectured that this was the same person whose presence in Boston Harbor, in 1644, has already been referred to. See Winthrop, II. 222 n.

[2] Col. Papers, Sept. 26, 1651. The instructions are printed in full in Md. Arch., Proceedings of Council, 1636–1667, 265, and in the Va. Mag. of Hist. XI. 38–40. Stagg, as a merchant and in other capacities, had been connected with Virginia since Harvey's administration; while Bennett was a well-known Puritan, who, after long service as a burgess and a councillor, had left Virginia with his co-religionists who, in 1648, settled Providence, later Annapolis, in Maryland.

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borne.[1] The fact that, a few years before, Bennett as a fugitive Puritan from Virginia had been received and entertained by Maryland, seems not to have operated as a restraint upon him in his treatment of the latter province.

The arrival of the act of parliament of October, 1650, prohibiting trade with the colonies which showed signs of revolt, though no special provision, except the sending of the commissioners, was made by the English government to enforce the embargo, had greatly exasperated the ruling class in Virginia. We are told that Governor Berkeley exerted himself vigorously to arouse the people to resist the parliament, and that he called its leaders "bloody tyrants." He assured himself of the support of a large part of the militia; he sought the aid of the Indians. With the support of the clergy and the help of stories to the effect that the royal cause would soon triumph again in England, the governor sought to bring the population of Virginia to the point of resistance. Under his leadership the entire legislature in a spirited address[2] repelled the charge that they were rebels or traitors, and spoke of the act of 1650 as if it made slaves of them. They were quick to make an express reserve of the right to resist by force any law which was intended to take away their lives or substance. If the expenditures which the company had made on behalf of the province in its infancy — and which were now cited as a justification for a stricter obedience — were to be used to make slaves of themselves or their posterity, they declared that they would have avoided such gifts as they would shun poisonous serpents. As to allegiance, they did not conceive that it was due to every faction which might possess itself of Westminster Hall. "In a condition so dubious and uncertain, . . . we desire them to permit us, simple men, to take leave to follow the perspicuous and plaine pathes of God and our laws, and that they would

[1] Colonial Papers, Sept. 26, 1651. Both Dennis and Stagg were cast away in the ship *John*, on their voyage to Virginia. *Ibid.* Nov. 9, 1652.

[2] This declaration was made by the general assembly in March, 1651, but it voiced the sentiments which had prevailed in Virginia ever since the outbreak of the Civil War. Va. Mag. of Hist. I. 75–81; XI. 37.

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be pleased to remember that good charitable Axiome in them, That none should be condemned till they were first Heard."

Respecting the details of the surrender of Virginia to the commissioners of parliament we have little knowledge. When the commissioners, with their two armed vessels, arrived in Virginia, Berkeley is said to have collected a body of about one thousand armed militia at Jamestown. As usual, he blustered, calling the commissioners, or those whom they represented, pirates and robbers, and predicting that Virginia would soon be subjected to the control of a company of grasping merchants. But the commissioners, by circulating their commission, a declaration, and other mild statements concerning their errand, soon counteracted the influence of Berkeley's statements. Moreover, resistance to the power which had brought Charles I to the block was something which the governor and council of Virginia, even with the Cavalier backing which they had, were far from being prepared to undertake. Therefore "mutual engagements" passed between the commissioners and the governor and council. The militia were sent home and a call was issued for a meeting of the general assembly. This occupied the time from January till March, 1652.

When the general assembly met, the submission of the province was made without a struggle or the shedding of a drop of blood. The articles[1] of surrender were signed on the 12th of March. They consisted of two parts, one containing an agreement with the province as represented in the general assembly, and the other with the governor and councillors, the object of the whole being to make the change as easy as was practicable. The submission was declared to be a voluntary act, and not the result of conquest. The former government was declared to be at an end, but, so far as it was possible for the commissioners to do so, the property rights of the colonists, the succession of assemblies, and the preservation of the former limits of the province were guarantied. It was declared that Virginia should be free from all taxes except those levied under the authority of its assemblies, and that no forts or garrisons

[1] Hening, Statutes, I. 363–368.

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should be maintained in the province without its consent. Freedom of trade should be enjoyed, subject to the laws of the Commonwealth. The use of the Book of Common Prayer, with the exception of the passages which related to the kingship, was to be permitted for one year; and in fact its use was never forbidden.

For the ease of the governor and council it was agreed that they might be excused for a year from taking the engagement of fidelity to the Commonwealth, and during that time they should not be censured if they prayed for or spoke well of the king in their own houses or to friends. Their property should be secure, the debts due them should be paid and they should have liberty, if they chose, to dispose of their estates and leave the country. An act of indemnity, covering all that had been done in support of the royal cause, was issued under the seals of the commissioners, and all who refused to submit to the government of the Commonwealth were given a year in which to remove from the province.

Among the articles of agreement with the assembly were two, the principle of which the English government never accepted. Those were the two which set forth the claim on behalf of the assembly to the exclusive right of taxation, and the claim to the restoration of the original boundaries of the province. We know that Lord Baltimore [1] submitted arguments in England against the latter proposition and in defence of the integrity of his own province, arguments which were forced from him as well by the doings of Bennett and Claiborne in Maryland as by the insistence of the Virginians on the restoration of their former bounds. In his statement on the subject, Baltimore called attention exclusively to the advantages which might be supposed to come to England from the existence of two provinces rather than one in the region of the Chesapeake. The caution with which he spoke at the same time betrayed a full sense of the weakness of his position as a Catholic proprietor. But the proposal to strengthen royalist Virginia by adding Maryland to it could scarcely meet with the approval of

[1] Md. Arch., Proceedings of Council, 1636–1667, p. 280.

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Cromwell and his advisers. They might be willing to suspend the governmental powers of Baltimore, but the restoration of his territory to Virginia would be decidedly inconsistent with the policy and interests of the Protector. It was even less likely to find favor with him than with the Stuarts themselves.

In Virginia itself events which occurred immediately after the submission to the parliamentary commissioners indicated that this was not to involve the direct appointment of the officials of the province by the English government, though it is almost necessary to suppose that in the case of important officers the choice of the assembly was approved by the Protector and his council. About a month after the submission a new assembly was elected.[1] This body, together with the commissioners of parliament, after long debate decided that Richard Bennett should be governor and William Claiborne secretary. A council was also designated, and at the head of the list of its members stood the names of Captain John West and Colonel Samuel Mathews. The appointment of other officers was for the time being intrusted to the governor and commissioners, but it was declared that hereafter their choice should belong to the burgesses as representatives of the people of the province. It was specially stated that commissioners of the counties should be selected in this manner. As had previously been the case, the governor and council were to have seats in the general assembly, while it was also provided that they should execute the laws and administer justice in accordance with the laws of England, the instructions from parliament, and the acts of the assembly.

We are informed that these acts were submitted to parliament and that they were considered; but of decisive action either for or against them, the extant records afford no evidence. Their effect, however, so far even as the executive was concerned, was to transfer the centre of gravity more completely from England to Virginia. The general assembly had been made the source of power, holding as it did both the right of appointment and that of legislation. A change

[1] Hening, I. 371.

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had been wrought in Virginia government similar to that which Fendall, a few years later and perhaps in imitation of this very event, attempted in Maryland. The form which Virginia now assumed was the same as that under which West Jersey existed at a still later time, and was much the same as that of the corporate colonies of New England. It meant a very large degree of independence, and, as a phenomenon, was to reappear when, at the beginning of the Revolution, one province after another dispensed with its royal executive and organized government under officials of its own choice.

That the change met with the approval of the great body of Virginians there can be no doubt. The royalists who otherwise would have stood by the old executive favored it, because it gave them the largest possible independence of that parliament and protectorate which had been built up on the ruins of the kingship. The minority who were in sympathy with parliament would naturally incline to a large degree of colonial independence. Bennett, the Puritan, and Claiborne, the trader and adventurer, would find their interests best served by a settlement such as this. A Virginia thus organized would be quite as likely to support their plans in reference to Maryland, as it would be were it placed under the continuous and direct control of parliament. Under this constitution, with Bennett as governor, and, after his return to England, with Edward Digges and Samuel Mathews as deputy governors, Virginia continued peaceful for the next eight years. In 1658 a controversy arose between the burgesses and the governor and council over the right of the latter to dissolve the assembly. The burgesses, notwithstanding some threats on the part of the council to refer the dispute to the Protector, maintained their claim to exclusive control over their sessions, and at last the council quietly acquiesced.[1] Under this system of con-

[1] Hening, I. 499 *et seq.*, has printed a part of the proceedings of this remarkable assembly. The Journal in full exists among the copies of Ancient Records in the Library of Congress. At the beginning of the session a letter was received from the Protector's council announcing the death of Oliver and the succession of his son Richard. Virginia was commanded to

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sistent self government Virginia pursued its uneventful course till news came from Europe of the approach of the Restoration.

When the commissioners, having received the submission of Virginia, reached Maryland, they required that all the inhabitants of the province should subscribe the engagement to the Commonwealth, and that all writs, warrants, and processes should run in the names of the Keepers of the Liberties of England. But these requirements necessarily involved results more important than the performance of the same acts in Virginia. Though Maryland had been peacefully disposed and its proprietor had striven to maintain a neutral attitude toward the contending parties in England, Bennett and Claiborne were now proceeding to take from him his rights of government and to place the province directly under the control of parliament and the council of state. The religion of the proprietor and of a part of the colonists, the large powers which had been bestowed in the Maryland charter, and the charge that the king had been misled in making the grant, were used as arguments to justify the step which was now to be taken. A few months later they were urged by Bennett and Samuel Mathews in England.

But, since Governor Stone and the other Maryland officials were bound by oaths to the proprietor, they at first refused to obey the requirements of the commissioners. Governor Stone was therefore suspended by the commis-

proclaim him and proceed with orderly government. The burgesses, who appear to have acted throughout as a separate house, resolved to obey the letter. At their request Governor Mathews came to the house and, in the presence of the burgesses and council, confirmed their liberties, declaring that the power to elect officers was in the grand assembly, and saying that he would join in addressing the Protector to confirm their existing liberties. A committee, with Claiborne at its head, was chosen to frame an address to the Protector. During the session some controversy arose between the burgesses and the governor and council over the "establishing of the government," the exact nature of which does not appear. But the governor and council acquiesced till the pleasure of the Protector could be known. A strong feeling against lawyers was manifested among the burgesses, and one vote to eject them, *i.e.* probably to exclude them from practice, was passed. It was this assembly, also, which first passed the act levying 2*s.* per hogshead on the export of tobacco.

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sioners. A new council was named by them, of which Robert Brooke was the leading member. The authority of the proprietor was then suspended by the enforcement of the command that the engagement should be taken to the Commonwealth, and that legal process should run in the name of the Keepers of the Liberties of England.[1] Governor Stone remained out of office from March until June, 1652, the government of Virginia in the meantime being changed as already described and Bennett securing election as governor. As things were at that moment, the executives of Maryland and Virginia were fast becoming the same, and an important step was taking toward the union of the two provinces.

But in June, on the return of the commissioners to Maryland, an agreement[2] was reached between them and Governor Stone, Secretary Hatton, and the leading councillors. According to this Stone and Hatton resumed the administration of the government in coöperation with the councillors who had been appointed by the commissioners. But the governor and others who had scruples on the subject were excused from taking the engagement, and continued to act under their oaths to Lord Baltimore until the pleasure of the English government should be known. Government was now administered in the name of the proprietor, but with express recognition of the Keepers of the Liberties of England.

On the very day of the reinstatement of Governor Stone, a committee of Puritans from Providence — later Annapolis — with Commissioner Bennett at its head, was appointed to treat with the Susquehanna Indians.[3] They were also to inquire into alleged abuses said to have been committed by Robert Vaughan, the commander of Kent island, and, if they saw cause, they might remove Vaughan from his office. In this affair the hand of Claiborne becomes clearly evident when, in the treaty which was soon concluded with the Susquehannas, the statement appears that Kent island and Palmer's island belonged to him. There is, however, no

[1] Md. Arch., Council Proceedings, 1636–1667, 271.
[2] *Ibid.* 275. [3] *Ibid.* 276, 277.

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evidence that the charges against Vaughan came to a hearing, or that Claiborne attempted to exercise authority within the islands.

Meantime, in the summer of 1652, the case of Lord Baltimore and his controversy with Virginia came up before parliament and the council of state in England. Samuel Mathews represented Virginia as its agent, and Lord Baltimore pleaded his own case, using the arguments to which reference has already been made. We hear that the case was before the committee of parliament on petitions and before the committee of the navy, and that the latter body reported in favor of the validity of Baltimore's grant, though in their opinion the proprietor had done some things which were not conformable with the laws of England.[1] For this reason the clause in the agreement with Virginia which provided for the restoration of the original bounds of that province was not confirmed. But the question of government within Maryland itself was not decided when, in April, 1653, the Long Parliament was dissolved.

No further progress was made until after the institution of the Protectorate, at the close of 1653. Then Mathews renewed his petition[2] for the recognition of the government which the commissioners had set up in Virginia and Maryland. Thereupon the council of state ordered that the papers connected with the dispute between Lord Baltimore and Virginia should be sent for; that they should be considered by Mr. Strickland and Sir Anthony Ashley Cooper, who should call before them Edward Winslow, Colonel Mathews, and such others as were acquainted with the affairs of the provinces concerned, and that a report on the whole matter should be laid before the Protector. On January 12, 1654, at the request of Lord Baltimore and others, Cromwell wrote to Richard Bennett, the governor of Virginia, requiring him and the officials under him to refrain from all violent inter-

[1] Bozman, History of Maryland, II. 692 *et seq.* Note on pp. 20–22 of the tract entitled "Virginia and Maryland," in Force, Tracts, II.; Colonial Papers, January 19, and December 29, 1653.

[2] Colonial Papers, December 29, 1653; Md. Arch., Proceedings of Council, 1636–1667, 296.

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ference with the affairs of Maryland while the case was pending before the council in England.[1]

Baltimore, in spite of the precarious tenure by which at this time he held his rights, still had reason for some confidence. He therefore, early in 1654, not only ordered Governor Stone to continue the granting of land and the administration of the oath of fidelity in the proprietor's name, but to issue writs in his name as well.[2] Three months later the Protectorate was proclaimed in Maryland. The object of this act, as shown by the language of the proclamation and by subsequent events, was to push the commissioners one side and to place the colony, with its proprietor, in direct relations with the Lord Protector. Governor Stone also proclaimed a general pardon, excluding, however, from its benefits those whom, like Claiborne and Ingle, the proprietor had not pardoned, and those who had engaged in any combination, conspiracy, or rebellion against the person or rights of Lord Baltimore. Some of the leading Puritans, notably Robert Brooke, were also removed from the council. Finally, on July 4, 1654, the governor issued a proclamation in which the commissioners and those who had supported them were charged with leading the people away into rebellion against the proprietor, whereby their estates and lives were made liable to forfeiture at his pleasure.[3]

These acts were interpreted to mean an intention on the part of the proprietor and governor to nullify the settlement which had been made by the commissioners, and the suspicion roused the Puritan party within the province to action. The last proclamation revealed to them also the danger to which they were exposed. It was felt that the proprietor and governor were violating the spirit of the Protector's letter, which was to the effect that the *status quo* should be main-

[1] Letter CXXXIV, in Carlyle's Letters and Speeches of Cromwell, Am. ed., 1863. This letter was by some interpreted to mean no interference at all. To correct this idea and to clearly show that only violent interference was meant, Cromwell wrote again September 26, 1655, Letter CXL.

[2] Md. Arch., Proceedings of Council, 1636–1667, 298–300. The instructions of Baltimore at this juncture have not been preserved, but Stone's proclamations preserve their substance.

[3] *Ibid.* 304, 305, 308, 312; Bozman, II. 499, 500.

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tained until the controversy could be settled in England. As soon as the proclamations concerning writs and the oath of fidelity had been issued, two petitions were sent to the commissioners, asking them to interfere. Bennett and Claiborne in reply advised the petitioners to refuse obedience to the new orders.[1] Nothing more was done until the issue of the proclamation in July, which seemed to imperil the property and lives of Lord Baltimore's opponents.

At this juncture Bennett and Claiborne, claiming that their authority had been duly recognized by the Protector and that Stone was violating the terms of the "settlement" and was disobedient to the Commonwealth, again visited Maryland, and demanded that the governor should surrender his commission. This was on July 15, 1654. Stone at first made some show of resistance, but very soon agreed to meet the commissioners and discuss the matter. But, apparently before the meeting occurred, Stone was moved by fear of an attack from Virginia to make a full surrender of his authority into the hands of the commissioners.[2] They then established a council, composed wholly of Puritans, to govern the colony. At its head was Captain William Fuller, and with him were associated Richard Preston, William Durand, Edward Lloyd, Leonard Strong, and others. They were empowered to call an assembly; but from the body itself, as well as from the right to vote for its members, all Catholics should be excluded.

The assembly met at Patuxent on October 20, 1654,[3] and by sixteen members, one-half of whom were councillors. Preston, a councillor, was chosen speaker. Job Chandler and Thomas Hatton, who had been returned from Saint Mary's county, refused to sit because of their oath to the proprietor. They were dismissed as "delinquents" and a new election was held to fill their places. This assembly enacted many

[1] The petitions and reply are given in Virginia and Maryland, 28–33, Force, Tracts, II.

[2] Md. Arch., Proceedings of Council, 1636–1667, 311–313; Virginia and Maryland, 38.

[3] Md. Arch., Proceedings of Assembly, 1638–1664, 339–356; Bozman, II. 507.

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laws, introducing them with a solemn declaration that no authority should be recognized in Maryland except such as proceeded directly from the Commonwealth of England. It was also enacted that the Roman Catholic religion should no longer be tolerated in the province. The proprietary rights of Lord Baltimore were further assailed by an enactment, that all who transported themselves into the province, by virtue of that fact alone had a right to occupy land without taking any oath to the proprietor. The records of the province were taken possession of by the new government and carried to Patuxent.

On hearing of these events, Lord Baltimore wrote to Stone, blaming him for his weak submission.[1] Luke Barber, in a letter to Cromwell, dated Maryland, April 13, 1655,[2] states that Stone learned from Eltonhead, who had just come from England, that Baltimore's patent had not been taken from him. That Baltimore wrote to Stone about his submission is made certain by references in other papers; but the letter itself has been lost. This roused Stone to action, and early in 1655 he resumed the duties of governor at Saint Mary's. He first succeeded in regaining possession of the records. He then fitted out an expedition of about two hundred men, on board twelve small vessels, and started with them to overawe the Puritans of Anne Arundel county. They secured the aid of a merchant ship, the *Golden Lyon*, which lay at anchor in the Severn and was under the command of Roger Heamans. Though Stone's friends afterward affirmed that it was not his intention to attack the Puritans, but only to bring them to terms by an armed demonstration, as soon as they appeared Heamans opened fire on them. An engagement followed[3] in which the force of Stone was completely defeated, March, 1655. Nearly all

[1] Bozman, II. 696, from Thurloe, State Papers, V. 486.

[2] Bozman, II. 686.

[3] See accounts of this in Strong's Babylon's Fall; in Langford's Refutation of Babylon's Fall; in Hammond's Leah and Rachel. The last-named pamphlet is reprinted in Force, Tracts, III. See also Hammond *versus* Heamans, referred to in Colonial Papers, 1574–1660, 434. See also Bozman, II. 518–529, and Barber's letter, with the letter of Mrs. Stone, in Bozman, II. 686–698.

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who were not slain were taken prisoners. At first a general proscription of the leaders was proposed, but, largely through the intercession of the women, all except four of the survivors escaped with their lives. An order was issued that the estates of those who participated in the expedition should be sequestered; but in the end fines only were levied on the property of the accused, to meet the cost of the expedition.

The Puritans were now left in control for several months, during which time the missionary operations among the Indians were brought to an end and the extension of Virginia to its original bounds was much discussed. Meantime the struggle between the proprietor and his opponents was transferred to England. Petitions and statements from both sides were submitted to the Protector and his council. Both Bennett and Claiborne went to England and urged the claim of Virginia to the peninsula of Accomac. They sought to justify their course as commissioners, and to show that Lord Baltimore's policy, both in Maryland and at home, had been so opposed to that of England, that his grant should be declared forfeited. Baltimore, in his petition, laid stress on the alleged violent character of the proceedings of the commissioners in Maryland.[1] He secured a special reference of the case to Lords Whitelocke and Widrington, who reported to the council of state, and then the entire question was referred back to the committee of foreign plantations, with instructions to speak with the parties and report what they thought fit to be done. This they did, but the report has been lost.

So occupied were Cromwell and his council with weightier matters, that no decision of the Maryland dispute was ever reached by them. But without a positive verdict in its favor the Puritan régime in that province could not be maintained. It had been established as the result of encroachments which were begun when Maryland was brought within the purview of the commissioners. Therefore Baltimore, relying on the favor with which his claims were regarded in England, in July, 1656, appointed Josias Fendall[2] governor with the usual

[1] Colonial Papers, January 22, July 31, December 17, 1656; Thurloe, State Papers, V. 483.

[2] Md. Arch., Proceedings of Council, 1636–1667, 323, 327.

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powers, and afterward sent over his brother, Philip Calvert, to be secretary, to sit in the council, and to attend specially to the proprietor's interests. In November, 1657, an agreement[1] was concluded between Baltimore on the one side and Bennett and Mathews on the other, the terms of which were, that proprietary rights should be left to be determined as the Protector and his council should direct, that no lands should be forfeited because of opposition to the proprietor, that those who desired might remove from the province within one year, and that religious toleration should continue as it was before the last assembly. After brief opposition this agreement was accepted by the Puritans of the colony, and their officers yielded to those who had been appointed by the proprietor. Thus the long struggle between Maryland and Virginia was brought to an end, and Lord Baltimore to all intents and purposes was reinstated in his rights.

But before this narrow and local issue had been adjusted events of wide-reaching importance had occurred in the West Indies. In connection with these events it became increasingly apparent that the government of the Protectorate was beginning to develop a colonial policy and that the suspension of activity in those lines which had been necessitated by the Civil War was coming to an end. Indications of the same thing had already been given by the passage of the acts of 1650 and 1651 affecting trade and by the reduction of Barbadoes and Virginia. The colonizing, as well as the conquering, energy of the new republic was also showing itself in Ireland, though under peculiar and exceptional conditions.

That such an outburst of national energy as was indicated by the Puritan Revolution would be followed by an increase of colonial and maritime activity was almost inevitable. That Revolution, in fact, was a result of the abounding national life which began its pulsation when the new western world was discovered, when the remote East was opened up by European voyagers; when, too, Greek and Roman antiquity had its new birth and the northern nations became more than ever impatient of papal control. It was genuinely Elizabethan in its origin. The revolutionary and destruc-

[1] Md. Arch., Proceedings of Council, 1636–1667, 333.

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tive course which it took was due to the fact that Elizabeth in her later days, and after her the Stuarts, had attempted to dam up the national energy in certain directions, until at last it burst through their obstructions and overwhelmed them in its flood. Cromwell, who was brought to the front by the Revolution, was akin to the Elizabethans in some of his ideals and most cherished policies. Puritanism emphasized the national trend toward the Protestant faith. Under its lead the old antipathy toward Spain attained again its free and unobstructed course. As in the sixteenth century, so now, this feeling was closely connected with the motives which led to colonization. They were all patriotic, commercial, and religious in character, the relative strength of these varying with each successive age; and one of their chief objective points was to secure for England the largest possible share of that new world which Spain was too weak to grasp.

But the Commonwealth first found itself involved in war with the Dutch, the outgrowth of its assertion of the right of search, of its claim to sovereignty over the four seas, of the commercial rivalry between the two nations which had been increasing since the beginning of the century.[1] An incident of this war, which occurred near its close, was the despatch of Robert Sedgwick and John Leverett, with a few vessels, to dislodge the Dutch from New Netherland. Both Sedgwick and Leverett were residents of Massachusetts and they were instructed to secure recruits among the New England colonies for their expedition. Connecticut and New Haven, because of the peculiar hostility which they then felt toward the Dutch, quickly responded. Massachusetts followed with some reservation. But, just as the required number of troops were assured, in June, 1654, news came of the conclusion of peace between England and Holland. The enterprise against the Dutch was dropped; but, to the gratification of the New Englanders, Sedgwick entered with a part of his vessels on a cruise against the French settlements to the eastward. La Tour's fort at St. John, the post at Port

[1] Gardiner, Letters and Papers relating to the First Dutch War, in Pubs. of Navy Recs. Soc. XIII; Geddes, The Administration of John De Witt.

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Royal, and the fortified trading settlement at Penobscot which years before the French had taken from the Plymouth people, were now without difficulty reoccupied. Sedgwick then returned to England, and though he had temporarily broken the hold of the French on Acadia, the friendly relations which then existed between the two powers were not disturbed by the event.[1]

Although at the outset it seemed not unlikely that hostile relations might develop between France and the English republic, it soon became evident that it was for the interest of both Cromwell and Mazarin to keep the peace. The war between France and Spain, which the negotiations of Westphalia had failed to conclude, was still in progress and was to continue till the peace of the Pyrenees in 1659. This, combined with the internal strife occasioned by the Fronde, forced Mazarin to maintain a conciliatory attitude toward England and to overlook much which in itself was irritating. It also gave him a positive interest in furthering the projects of Cromwell against Spain, especially in so far as they concerned Dunkirk. This also was directly favorable to the commercial policy which England was then pursuing against the Dutch.

As the war with Holland approached its close, the policy of Cromwell toward Spain began to assume definite form. Since the settlement of English colonies in the West Indies and the development of permanent trade relations there, a long series of outrages on British subjects and their vessels had been committed by the Spanish. These things they had done in their efforts to uphold the monopoly which had originated in the papal grant, an act the binding force of which the English did not recognize, but called instead "a certain ridiculous gift." As many of these losses had in recent years been suffered by those who were going to and from their own colonies, the grievance seemed in British eyes to be intensified. In fact war between the subjects of Spain and England had existed continuously in the West Indies for two generations, and now the question was, whether

[1] Thurloe, State Papers, I. 418, 425, 583; Colonial Papers, 1675–1676, Addenda, 89; Palfrey, II. 284.

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it should become open and outbreaking and involve the two states[1] in Europe as well.

There is evidence that in 1651 or 1652 Cromwell began to consider the advisability of an attack on the Spanish power in the West Indies. John Cotton, an occasional correspondent of the general, suggested it. Roger Williams, when on his last visit to England, in conversations with Cromwell learned that he had "strong thoughts of Hispaniola and Cuba." Thomas Gage, a converted Jesuit, who had lived many years in Spanish America and was unusually well informed, influenced Cromwell, by his arguments, to prove the wealth of the Spanish colonies and the inability of their inhabitants to defend them. Colonel Thomas Modyford, governor of Barbadoes and also a hater of the Spaniard, was consulted. While Gage recommended the seizure of some of the islands, Modyford urged the occupation of a part of the Spanish main. In the winter of 1654–1655 the advice thus given took practical shape in the expedition against Hispaniola under the command of Penn and Venables. Edward Winslow, of Plymouth fame, accompanied this expedition as one of the commissioners who were appointed to take charge of such experiments in colonization as might result; and like hundreds of others he succumbed to tropical disease before his errand was much more than begun. Owing to mismanagement, both on the part of the officials in England who provided the equipment and supplies for the troops and on the part of the commanders themselves, this effort failed of its immediate object. But a check was administered to illegal trade with the Dutch at Barbadoes, and the island of Jamaica, which was held by only a weak Spanish force, was occupied. War with Spain followed, but Jamaica remained permanently in the hands of its conquerors.[2]

[1] Gardiner, Commonwealth and Protectorate, III; Strong, in Am. Hist. Rev. IV. 228; Beer, in Pol. Sci. Quarterly, XVI and XVII; Milton's Prose Works, Bohn's Ed. II. 333; Carlyle, Letters and Speeches of Cromwell, Speech V.

[2] Gardiner, *op. cit.*; Strong, *op. cit.*; Firth, Narrative of General Venables; Granville Penn, Memorials of Admiral Sir William Penn, II. Ch. V.; Thurloe, State Papers, II. 250; III. 59, 62; Pubs. of Narr. Club, VI. 285; Long, History of Jamaica, I. 221.

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The conquest of Jamaica immediately raised questions which for a time threatened to modify seriously the fortunes of the New England colonies. The necessity for peopling the island was imperative, for only in that way could it be made English and preserved against successful Spanish attack. To the mind of Cromwell it apparently seemed easy to transfer a body of colonists from one part of the dominions to another; and something at least to be ventured, if by means of it the cause of English Protestantism could be strengthened. The policy of the nation in Ireland was just then making it familiar with wholesale removals of a subject people even from its ancestral home. Cromwell regarded the New Englanders as an exceptionally valuable body of colonists. Wherever they might settle, a society after his own heart was sure to develop. But both the climate and the soil of New England were rugged and inhospitable. For a period, also, after the emigration thither had been checked by the outbreak of the Civil War, times had seemed hard to the colonists, though after a few years prosperity revived. With it came contentment, interrupted though it was by now and then a hard season.

But during the interval of depression Cromwell had received from his New England correspondents hints of a willingness to remove to some more inviting country. This feeling seems to have been especially strong in the colony of New Haven, which at the time was planning a settlement on the Delaware. In that colony, especially at Guilford, were ministers and magistrates who, either directly or through Samuel Desborough, were in communication with Cromwell. Letters also on the subject were now and then exchanged with friends in other colonies. John Winthrop, Jr., and Roger Williams exchanged views about it. Hugh Peters, as usual, interested himself, though in England.[1]

Cromwell had already suggested the removal of some of the New Haven people to Ireland and their settlement near Galway. But the plan to which he soon after committed

[1] Strong in Report of Am. Hist. Assoc., 1898, p. 79; Conn. Hist. Colls. III. 318; 4 Mass. Hist. Coll. VI. 115, 291.

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himself much more fully was the wholesale removal of New Englanders to Jamaica. In the autumn of 1655 he sent Daniel Gookin to New England with special instructions to lay before the colonists, especially those of New Haven, the attractiveness of Jamaica as a place of settlement and his desire to plant there a body of God's people. If a sufficiently large number would remove, land and a place of settlement should be assigned under most favorable conditions. The churches should be protected and large privileges of self-government be enjoyed. But Cromwell reserved the right of appointing the governor, which would have placed the colonists under a provincial form of government. This of itself would have operated as a deterrent to many of the New Englanders. But before Gookin was able to deliver his message, news had arrived of the sickness which prevailed among the troops in Jamaica and of the generally unhealthy conditions which existed there. The report had come from Major Sedgwick, who, after his return to England, had been sent with supply ships to the West Indies, and from Barbadoes had followed the army to Jamaica. His letters, especially to England, sufficiently revealed the despair which there existed among the troops. General Fortescue, Thomas Gage, and presently Sedgwick himself, died at their posts. This convinced the great body of the colonists that the plan of removal, extremely doubtful at best, must prove ruinous if attempted under such conditions. The general court of Massachusetts firmly, though in conciliatory phrase, declined the offer of the Protector. New Haven sent an agent to Jamaica to investigate, and the town of New Haven seemed inclined to accept, but the general court refused its consent. Plymouth and Connecticut took no official action, and the invitation was probably not extended to Rhode Island. Gookin, therefore, had to report, as the result of some eight months of effort, that only three hundred persons had indicated their willingness to go, and they were mostly young, many of them young women. Thus Cromwell was forced, though unwillingly, to abandon the plan, which curiously illustrates the superior interest which even a Puritan like Cromwell felt in the fate of the island colonies, as compared

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with those on the continent, especially of New England.[1] This, however, was an opinion which the progress of the French war in the next century tended to modify. Throughout the colonial period the island colonies were especially valued by England because of the tropical character of their products. These were not such as could be produced at home, and the control over their supply was one of the chief prizes for which English merchants contended. The products of the northern colonies, on the other hand, were similar to those of the British Isles, and, if produced in sufficient quantities, would naturally come into competition with them. This was the economic reason for the preference that was widely felt for the island colonies and for the larger share of attention which was paid to them.

But there was another reason for this phenomenon — one which was derived from the position of the island colonies with reference to the frontier and their relation to the general problem of defence. Viewing the subject from the purely imperialist standpoint, the British frontier in America in the seventeenth century extended from Newfoundland to Trinidad, and was susceptible of further extension at both its northern and southern ends. If one were treating of colonial administration alone, without particular reference also to the institutions of the United States, he would take his stand in England and trace the development of the system wherever it appeared along the entire American coast. The plan of these volumes is somewhat more restricted than this and limits our attention chiefly to the middle section of that great arc. But the existence of the frontier as a whole, and of colonies within it which did not become parts of the United States, must not be forgotten. Account now and then must be taken of their influence upon the system as a whole and upon the continental colonies in particular. With the advent of the Interregnum, and especially with the conquest of Jamaica, the influence of the

[1] Penn. Memorials of Admiral Penn, II. 585; Thurloe, IV. 440, 449; V. 6, 509, 510; Strong, *op. cit.*; New Haven Col. Recs. II. 180; Atwater, Hist. of New Haven, 202.

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island colonies appears with special clearness, and from that time was continuously felt.

Those colonies and the seas which surrounded them became at that time the seat of war. They had been so before, but now the fact appeared with especial clearness. It now became perfectly evident that, in a naval and military sense, the West Indies were the most important part of the frontier. Thenceforth this fact was never lost sight of, though at a later time the Gulf of Saint Lawrence rose to something like a corresponding importance. But among the West Indies were Spanish, Dutch, and French possessions, territories which belonged to each of the states of which England was a rival or with which it was often in hostile relations. When, therefore, England was at war, the West Indies were almost sure to be a scene of activity. During the wars of the Restoration period and of the eighteenth century fleets and armies very frequently came and went between that region and Europe. The British admiralty, the privy council, and all the officers of state who had to do with diplomacy and defence were always concerned with relations in that quarter. Frequent exchanges or other transfers of territory occurred there.

In other words, administrative control by the British government over the island colonies became at an early date continuous and vigorous. From the time of Cromwell the correspondence which passed between them and the home government was increasingly large and important. After the Restoration the system of royal government was rapidly extended over those colonies; royal appointees of all sorts were sent among them, not a few being commissioners for special purposes. Elaborate sets of instructions were given to the governors, those which were prepared for Jamaica serving in some cases as models for later instructions to the governors at large. It is true that royal government was first applied on a considerable scale in Virginia. But life in that province moved quietly and required little vigorous attention from the home government. Its defence did not present questions of great difficulty. Until the close of the seventeenth century the same was true of all the continental

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colonies. Hence it was that the precedents which were favorable to active imperial administration were first established on a large scale in the government of the island colonies. The system was most thoroughly tested there.

Soon after the occupation of Jamaica by the English, Thomas Povey, supported by Lord Willoughby of Parham and a group of merchants and others who were or had been officers in the army, submitted to the protector and council a remarkable series of proposals. They expressed the desire to pursue colonization by encroaching further on Spanish territory in South America, Mexico, and Florida, and asked for incorporation as a West Indies company. They also proposed the creation of a council for America, whose membership should include at least one principal councillor and a secretary of state. The duties of this body should be to improve the colonies which had already been secured and to plan new undertakings. They were to let the colonies understand that they were parts of "one embodied commonwealth whose head and centre is here [*i.e.* in England]." The council should be authorized to require from every governor an exact account of the government and laws of his colony, the number of men, its forts and means of defence. Information merely should not be sought, but the parties concerned should be roused up and advertised that his Highness was watchful for their general good and had further designs. The commissions of governors should be reviewed and they should all be made dependent on his Highness, be paid from a fund in England and be constantly accountable to England. The proprietary colonies should be reduced as near as possible to the same method and all made to conform to one model. Let correspondence, they said, be free and constant, and all be united into one commonwealth and regulated on common and equal principles. The colonial policies of other states were to be inquired into, the Spanish Council of the Indies being referred to as specially worthy of imitation. The colonies, if possible, were to be induced to raise a revenue of £10,000 or £20,000, to be lodged in the English treasury on their account, and disposed of by the council for America in the service of the colonies.

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These proposals are of great interest, for they reveal the ideas on the methods and objects of colonial policy which in 1656 and 1657 were gathering headway in England and were forcing themselves on the attention of the Protector.

Those who advocated them — Thomas Povey, Martin Noell, John Mills, Tobias Bridges, John Lymbery, and others — appear on the committee of the council for Jamaica and for America and were interested in trade to the West Indies. The plans which they suggested reappear in almost identical form after the Restoration, thus establishing the connection between the period of origins and that of the full development of British colonial administration.[1] Numerous references appear in the Colonial Papers during and after 1655 to the activity of Noell, Bridges, Lymbery, and others as traders and members of committee for Jamaica or for the island colonies generally. Thomas Povey, of whose papers the above proposals probably form a part, was apparently much occupied with questions of trade and colonization. He was thus prepared for the continuance of his work and its development as an office holder after the Restoration.

[1] Egerton Mss., copies in Library of Congress; Kellogg, The American Colonial Charter, in Report of American Historical Association, 1903, I. 211–213.

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CHAPTER VI

THE RESTORATION AND THE ROYAL COMMISSION OF 1664

By the year 1660 the results of earlier colonial enterprises had become so considerable as to appear in clear relief, while they were extended and reënforced in such fashion by the Restoration government itself as to give both unity and breadth to the movement. The return of the king gave again to the English executive its old form. National life had gained in vigor in consequence of the period of revolution, while its energies were no longer absorbed in domestic troubles. They found vent beyond the seas and proved their strength by the multiplication of colonies, the extension of trade, and the development of a more clearly defined colonial policy. Intense and successful rivalry with the Dutch was continued, resulting again in war. To this were added the beginnings of what before the end of the century was to prove a much larger and more prolonged struggle with France. This gave a world-wide significance to the navy, trade, and the colonies.

On the American continent the event of first importance during the period of the Restoration was the occupation of New Netherland and the subjection of the Dutch in that province to English rule. By this means the middle region which had been left unoccupied when Jamestown and Sagadahoc were settled came into the possession of the English. The middle Atlantic coast was thus closed to alien colonists, and a region of great strategic and commercial importance was acquired. By its acquisition a fatal blow was at the same time struck at the interests of the Dutch in North American commerce. Within this territory four provinces were founded, two of which were destined to be almost imperial in extent and resources. They gave unity to the colonial area, made possible a continuous coast line under English control on the east and a corresponding

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frontier line on the west. They gave a territorial basis from which the advance of the French on the north and west could be successfully met. As the Earl of Clarendon and the Duke of York, with a group of men who surrounded them, were chiefly responsible for this event, so this same group will be found for a generation to be closely connected with every act which had as its object the strengthening of imperial control over the colonies. In many ways the trend in that direction was powerfully strengthened by the establishment of the province of New York.

Next in importance to the acquisition of New Netherland was the settlement of the Carolinas. This gave a large and much-needed extension to the colonial area on the south. Not only did this extend the English coast line and frontier, but it partly filled in the gap between the continental and the island colonies; it helped to make the vast Newfoundland-Trinidad arc continuous. It therefore had an important influence on the relations between the English and Spanish in North America. The personal relations also between the founders of the Carolinas and Barbadoes are suggestive. As the result of the occupation of New Netherland by the English and of the settlement of the Carolinas, the New England colonies, with Virginia and Maryland, cease to be mere isolated outposts and take their places in a group of dependencies. The rudiments of a system of colonies begin to appear, and that suggested to the merchants and officials at home a colonial policy which should embrace them all and apply to them common principles of administration.

Next in importance to the acquisition of the colonies was the development of the policy by which their relations with one another, with other states, and with the parent state should be guided. Historically the processes of acquisition and government went on together and mutually conditioned one another. We may say that by 1675 the colonial territory had been definitely acquired; but at that date the principles upon which it was to be governed were just being developed. Not the least notable achievement of the period was the

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formulation which was then given to those principles and the effort that was made to enforce them on a large scale. The policy was set forth in part in the acts of trade, but it also concerned the problem of defence by sea and land, and touched more or less directly every question that lay within the sphere of government. Its object may be comprehensively stated to have been the maintenance of the sovereignty of England over the colonies, in order that the maximum of advantage for both, but especially for the realm, might be secured. It differed from the policy of the early Stuarts in this respect, that greater emphasis was laid on questions of trade and defence, while in ecclesiastical relations the colonies were allowed a large degree of freedom. In this connection it is worthy of note that the reference to the dominions which was contained in the Elizabethan act of uniformity was omitted in the act of uniformity of Charles II. This affords conclusive proof that the Restoration government declined to revive, so far as the colonies were concerned, the ecclesiastical issues upon which Archbishop Laud and his associates had laid such emphasis. The internal religious development of the colonies during the period of the Restoration proves that the government consistently adhered to this principle of action.

Perhaps the most direct line of connection which it is possible to establish between the ideals and policy of the Commonwealth and those of the ministries of Charles II may be found in the papers of Thomas Povey, to which reference was made at the close of the previous chapter. Povey and Noell appear to have renewed their overtures after the Restoration, and that in very much the same form which was given to them while Cromwell was still living. They urged the establishment of a council for foreign plantations, to be appointed by the privy council, which should give directions in ordinary cases and in extraordinary should report to the king. In 1660 Povey was appointed treasurer to the Duke of York, a post which he held until 1668. In 1661 he was made receiver general of rents and revenues of the plantations. He was also one of the masters of requests, and from 1662 to 1665 he was treasurer for Tangier and

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surveyor general of the victualling department. In both these posts he was succeeded by Samuel Pepys. Several of his kinsmen were also in office in Ireland and the plantations. He was on intimate relations with Temple and Crown, the claimants of Nova Scotia. These facts, together with others which will be mentioned later, suffice to prove that Povey was a typical office holder of the Restoration, and that he was brought into connection with a large group of men who, like himself, surrounded the statesmen of the time. His friend, Martin Noell, was knighted after the Restoration and died a wealthy merchant. The fortune of Noell appears to have been made in part in the slave trade, but he thought it not inconsistent with his calling to be also a charter member of the Society for the Propagation of the Gospel in New England.

Tobias Bridges, another friend of Povey, was also knighted by Charles II, and during the Dutch War, in 1667, commanded two regiments of the king's troops who, from Barbadoes as a centre, served in an expedition against Saint Christophers and the French islands of the neighborhood. Major Edmund Andros was an officer in one of these regiments. Captain John Berry, whom we shall meet as a member of the royal commission of 1677 to Virginia, commanded a part of the vessels with which the land force coöperated in this expedition. Captain James Carteret, afterward notorious in New Jersey, served at the same time; while Captain John Scott, whose activity as an agitator and intriguer against the Dutch before the occupation of New Netherland was conspicuous, shared even more prominently in these doings in the West Indies. The fact that M. De la Barre, as governor of Martinique and viceroy of the Caribbean islands, held a leading position on the side of the enemy, establishes a line of connection between these events and later ones of equal importance in Canada. Closely connected with these men and with all others who were engaged in the plantation service, was Joseph Williamson, who was at first secretary to Lord Arlington and later (1674–1680) secretary of state. His note-books were filled with abundant information concerning all the colonies, their officials and systems of govern-

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ment. For twenty years, as clerk, expert, or responsible official, Williamson's influence is traceable in every event of importance which affected the colonies. Among those who at this time sought to influence the government upon the issues which affected the northern colonies, none apparently grasped the situation more fully or urged his views more persistently than did Samuel Maverick, a man whom we have already met and whose activity at this time will receive further attention.

If we add to the individuals who have just been mentioned, Nicolls, Werden, Randolph, Cranfield, Blathwayt, Southwell, Sawyer, and rise from them to courtiers and statesmen of higher rank, — Berkeley, Culpeper, Arlington, Carteret, Shaftesbury, Clarendon, and the Duke of York himself, — we shall enumerate in part the group of leaders from whom proceeded the colonial policy of the Restoration. They belonged mainly to the Tory connection and were prominent in the vigorous assertion of the powers of the executive which distinguished the fifteen years and more that preceded the Revolution. The policy which they applied to the colonies was of the same general character as that which they supported at home. For their prominence and influence in colonial affairs they are comparable with Raleigh, Gilbert, and their associates in the Elizabethan age and with Gorges, Smith, Sandys, and other colonizers of the early Stuart reigns.[1]

But whether or not the suggestions to which reference has been made were precisely the ones that were adopted, they fitted in perfectly with the tendencies of the times and resemble to a marked degree the plan which soon took form. They also agreed well with the committee system, which to a large extent was perpetuated after the Restoration. The growth in the volume of business which occurred after 1660 promoted this tendency. By orders in council or by direct act of the king committees of council were created for a variety of purposes and were utilized as long as the need for them existed; then they disappeared and others took their

[1] Egerton Mss., Library of Congress; Colonial Papers; Dict. of Nat. Biog.

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places. Thus, by a free adaptation of means to ends, of which the gradual development of the cabinet furnishes the classical example, the executive business of the English government was done. During the years immediately following the Restoration we hear of a committee for the plantations or for the foreign plantations; and this was perpetuated, though with changes from time to time in its personnel. A standing committee for trade and commerce was appointed. We also hear of a committee for Jamaica and Algiers, of one for Jamaica alone, of one for the Guinea trade, of one for the royal company of adventurers, of one for the Newfoundland fisheries. Occasionally the entire council sat as a committee of plantations.[1]

On July 4, 1660, a little more than a month after the return of the king, under an order in council a committee was appointed to deliberate on petitions which had been presented by various merchants who were trading to the plantations in America. This committee was to receive further petitions or proposals relating to the plantations and report to the privy council. Among the members of this body were the lord chamberlain (Earl of Manchester), the lord treasurer (Earl of Southampton), Lord Say and Sele, Denzill Hollis, Secretaries Nicholas and Morrice, and Anthony Ashley Cooper. References appear to this group during the next few months under the name of the committee for foreign plantations or for plantations in America.[2]

When it was desired to create a body somewhat more permanent than a committee, but one which should work in connection with the privy council and subordinate to it, a formal commission was issued, accompanied, if thought needful, by instructions; and by this means a standing council or board of commissioners was brought into existence. But after the committee system developed, it is not necessary to suppose that the council or boards of commis-

[1] Colonial Papers, 1574–1660, 483, 484, 485, 488, 489, 490, 491; *ibid.* 1661–1668, 254. Fragmentary minutes of some of these committees have been preserved. The manuscript registers of the privy council furnish abundant additional evidence of the extent to which committees were utilized.

[2] *Ibid.*; N. Y. Col. Docs. III. 30.

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sioners, when they were created, supplanted the committees. The evidence apparently warrants the conclusion that the two continued to exist together and were used, the council for the permanent and general work of administration, and the committees for specific purposes. After the Restoration, moreover, the domestic and foreign trade of England was, so far as possible, administered separately from the trade and other affairs of the plantations. The plantations were treated as a group or unit by themselves. Still, all English interests, however distinct in location or in character, were superintended by the leading ministers and privy councillors, aided by such experts as they called to their assistance. Therefore all interests and policies came to a common clearing-house in the end, and there was a similarity of procedure among all the bodies concerned.

When, therefore, on November 7, 1660, just two months after the passage of the navigation act, a patent was issued for the establishment of a council for trade,[1] and on the first of the following December another patent establishing a council for foreign plantations, it did not imply that these bodies superseded all existing committees within their field. Their existence did not have this result, for evidence is abundant to the effect that many committees were later formed within the privy council to act or report on a great variety of matters connected with trade and colonization. The patents of November 7 and December 1 created standing councils, consisting largely of ministers and privy councillors, but also containing merchants and other experts, whose duty it was during a considerable period of time to consider and promote English interests at large within the entire field of trade and colonization. Committees in the meantime dealt with a variety of special and temporary interests.

The membership of the council for trade and of the coun-

[1] N. Y. Col. Docs. III. 30; Colonial Papers, 1574–1660, 490, 492; Dom. Papers, 1660–1661, 319, 353, 356, and succeeding entries. Possibly a month before the council for trade was appointed the merchant companies were called upon to suggest names of persons suitable for membership. A list of country gentlemen, officers of the customs, merchants, navy officers, gentlemen of affairs, and doctors of civil law was presented. Cunningham, Growth of English Industry and Commerce, Modern Times, 913–921.

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cil for foreign plantations was much the same. Lord Chancellor Hyde was at the head of both, and associated with him were the principal officers of state, especially the lord treasurer and Sir Edward Nicholas, secretary of state. Among the merchants whose names appear in both lists were Thomas Povey and Martin Noell, while the name of John Lymbery also appears on the council for foreign plantations. The council of trade was empowered to consider how the navigation, trade, and manufactures of the kingdom might be improved and to report its views to the king. In the commission and instructions to the council for foreign plantations the emphasis was laid on colonial trade, and the policy of the crown in reference to the colonies was outlined. "We have judged it meet and necessary," the commission states, "that so many remote colonies and governments, so many ways considerable to our crown and dignity . . ., should now no longer remain in a loose and scattered condition, but should be collected and brought under such a uniform inspection and conduct that we may the better apply our royal councells to their future regulation, securitie and improvement." In view of the growing trade and population of the colonies, it was also declared that, "in all treaties and leagues with foreign princes and allies, the security and prosperity of trade and commerce shall be tenderly considered and provided for." It was thus clearly announced that the extension of trade and colonization was thenceforth to be a leading object of English foreign policy.

The new council was instructed to secure and keep copies of all grants from the crown; to obtain from the governors all possible information concerning the way in which the colonies were governed, their laws, and the state of their defences. As often as necessary, the council was required to inform the king of the complaints of the colonists, of the nature and amount of the commodities which they produced, with full details respecting their commerce. It was to seek information from merchants, planters, seamen, and any others who could give it. It was also instructed to study the colonial systems of other states and to adopt such of their methods as seemed wise or ward off dangers which seemed to

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come from them. The idea was repeatedly enforced that the administration of the colonies must be made more certain and uniform, and that they should be treated as a whole rather than singly. The Society for the Propagation of the Gospel in New England was at this time rechartered,[1] and the council was instructed to care for the maintenance of orthodox ministers in the colonies and for the extension of Christianity among the natives. The instructions closed with a clause of general import, requiring the council to dispose of all matters relating to the good government and improvement of the colonies, using its utmost skill and prudence. In cases where its members should judge that further powers were necessary, they should apply to the king or the privy council.

Before the council for foreign plantations was formed the affairs of the West Indies had been prominently before the government. So had the conflicting claims of Elliot, Temple, and Crown to Nova Scotia, while the former doings of the Kirkes in Canada and other northern regions were an object of inquiry. In Virginia Governor Samuel Mathews had died, in January, 1660. The assembly, being already aware that the kingship was likely to be restored, had turned at once to Berkeley, who was still a resident of the province. He was restored to the governorship in March, though as the servant of the "grand assembly," the supremacy of which within the province was for the time being fully acknowledged.[2] To the acts of the session which was held when Berkeley was elected, the assembly prefixed the declaration that, because there was then in England "noe resident absolute and generall confessed power," the assembly declared itself supreme and required that all writs should issue in its name. But at the close of July the restored king issued a commission to Berkeley as royal governor.[3] In the autumn of

[1] Robert Boyle, who was president of the society, was also a member of the council for foreign plantations.

[2] The principal documents are printed in the Southern Literary Messenger, XI. 1 *et seq.* They show that Berkeley feigned unwillingness, but yielded and later excused himself to the king. Hening, Statutes, I. 502, 504, 509, 512, 526 *et seq.*, 530, 544; Neill, Virginia Carolorum, 351–354.

[3] Colonial Papers, July 31, 1660.

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1660, when the fact of the Restoration was known and had been duly announced, the assembly met in the king's name and the forms of royal government were fully restored within Virginia.

If one is to judge from the records which it has left, the activity of the council for foreign plantations was quite marked for about a year after its creation; then it diminished and wholly ceased with the year 1668. The chief activity of the board preceded the Dutch war of 1665 to 1667, and seems to have been lessened by that event.[1] Thomas Povey was especially prominent in all its early transactions. The business of the council began with an inquiry into the affairs of Jamaica and of New England. This revealed the fact that it was not so easy to secure information about New England as it was about the island colonies, and delay ensued. The affairs of Barbadoes also came prominently before it. It inquired into the conflicting claims respecting Nova Scotia. The necessity of limiting the tobacco culture and of diversifying the industry of Virginia came under consideration. It deliberated on the method of supplying servants to the plantations, and on the status of Jews in the colonies. Through the petitions of various parties who had grievances against Massachusetts it presently obtained some insight into New England affairs, and those continued for some time to occupy its attention. But in one report it expressed itself as convinced that Jamaica was capable of being made "the most eminent plantation of all his Majesty's distant dominions."[2] In order to facilitate its efforts the council, which was nearly as large as the privy council, created several subordinate committees. References appear to committees on New England, on Maine, on Nova Scotia, on the Quakers, and on Barbadoes. Its procedure was evidently an imitation of

[1] Its records, under the title of Minutes of the Council for Foreign Plantations, will be found in Colonial Papers, 1661–1668. In these entries the term committee, or committee of council, is frequently used, the title thus indicating the activity of another body, viz., a committee of the privy council for foreign plantations. But in the Calendar (see Index, p. 710) the entries which appear in this form are classed as a part of the Minutes of the Council for Foreign Plantations, though that is apparently an error.

[2] Col. Papers, 1661–1668, 47.

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that of the privy council, a fact which may be assumed to have been true of all the commissions of the period.

One of the first duties of the new plantation board was to draft a letter which, with certain variations, could be sent to Barbadoes, Virginia, and New England. In this letter, which was despatched to Virginia in the spring of 1661, the fact of the appointment of the plantation council was announced, and the governors were directed to send to it an account of their system of government, of their militia and other means of defence, of their revenue and expenditures. A statement of the population of their colonies, arranged according to social classes, was also required, with an account of the products raised and full statistics as to trade. They were particularly warned to enforce the act of trade, to suppress immorality, and to maintain worship according to the forms of the Church of England. Virginia was told to send over a list of its parishes and to encourage the settlement of Anglican pastors. With the letters went the king's declaration from Breda and the act of indemnity which had recently been passed by parliament.[1]

In the case of Virginia, however, the information thus called for was probably given by the governor in person, for, owing to rumors that an effort would be made to revive the old company, the assembly, at its session of March, 1661, resolved[2] to send Berkeley to England as agent, and voted to raise 200,000 pounds of tobacco to meet his expenses. Berkeley was absent on this errand till the fall of 1662, Francis Moryson serving in the interval as deputy governor. Of the details of his doings as agent we have no knowledge, but nothing more was heard of the proposal for the reëstablishment of the company. It is certain that Berkeley, during his residence in England, was thrown into connection with the group of merchants, officials, and courtiers who, from various motives, were interested in schemes of colonization. His brother, Lord John Berkeley, was a member of both the council for trade and the council for foreign plantations. In 1663, besides becoming a charter member of the Royal African company, Lord John was one of the

[1] Colonial Papers, February 11 and 18, 1661. [2] Hening, II, 17.

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eight to receive the patent of Carolina, while two years later, jointly with Sir George Carteret, he received from the Duke of York the grant of New Jersey. For a time he was also lord lieutenant of Ireland. At an earlier date, during the period of the Stuart exile, he had also been interested in a plan for the establishment of a proprietorship in Virginia. He was a typical courtier of the early period of Charles II, loose in morals, an autocrat in his notions of government, and a high churchman in religion. In the last two qualities the governor of Virginia fully shared, while for a period he too was an active member of the board of proprietors of Carolina.

Berkeley returned to his province fully sharing in its spirit of loyalty and of Anglican orthodoxy, and entered upon a second administration which was to continue for more than fifteen years. The first half and more of this term was, with a few exceptions, a period of quiet prosperity and growth in Virginia. Through the avenues of trade and personal intercourse, as well as by the ordinary process of administration, intimate connection with England was maintained. The devotion of Virginia to the restored monarchy was shown by an act passed in 1661 which provided that the anniversary of the execution of Charles I should be perpetually kept as a fast, and the anniversary of the restoration as a day of thanksgiving. Probably in no other colony would such legislation as this have been possible. But the cavalier, Berkeley, was eminently fitted to be the leader of a society which was animated by this spirit, and for more than a decade he enjoyed in Virginia a degree of respect amounting almost to reverence.[1] In Maryland, likewise, the proprietary régime was fully reëstablished, and for a considerable time it continued undisturbed by internal strife or by conflict with any outside power.

So far, therefore, as the continental colonies were concerned, the questions which demanded immediate attention were the settlement of disputes within New England, the determining of the relations between that group of colonies and the home government, and the reoccupation of New Netherland. The Clarendon ministry regarded these ques-

[1] See Ludwell's account of Berkeley, Va. Mag. of Hist. V. 54.

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tions as interdependent and treated them collectively, as distinct but not unconnected aspects of the same colonial policy. The reoccupation of New Netherland was an incident of the struggle with the Dutch for commercial supremacy, while at the same time it involved a resumption of active administration in the southern part of the old territory of Northern Virginia, or more exactly in the middle region which under the grant of 1606 had been left free to the two companies for joint settlement. The view systematically advocated by the English government implied that, owing to the failure of the Plymouth patentees, and later of the New England council, to successfully prosecute their plans of colonization, that region had been left open, and Dutch adventurers had forced their way in and taken possession. They had secured the best part of the beaver trade and had become carriers of much of the tobacco and of other products of the English colonies, as well as of their European imports, on the ocean. Their subjection or removal was therefore regarded as an incident both of the territorial and trade policy of England. Partisans even went so far as to affirm that the Dutch government had never acknowledged the work of these squatters or made itself responsible for the defence of the territory which they had occupied. Therefore should England resume possession of its own, it would not be a *casus belli*. This view, of course, was extreme and inconclusive, for it ignored a whole series of facts which have been elsewhere set forth. But it suited well the imperialistic ambitions of George Downing, of the New England colonists, and of the English merchants and officials. After the Restoration events both in England and America tended steadily toward this consummation, until, in March, 1664, the decisive step was taken by the issue of the charter to the Duke of York. By that patent the province of New Netherland, though still in the possession of the Dutch, was bestowed on the heir of the English throne.[1] This insured not only that New York would be

[1] The name New Netherland, of course, does not appear in the patent or indeed any reference to the Dutch. It purports to be a grant of unoccupied territory.

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a special object of interest to the king and the English government itself, but that on the accession of James it would become a royal province. The grant, as originally made, was vast in extent, and had the duke at the time been as fully conscious of his opportunities in America as was Nicolls, his governor, it would not have been diminished by sub-grants. But even as it was, it set up an obstacle to the westward expansion of New England, while Long Island and the two dependencies which were joined with it — Martha's Vineyard and Nantucket and the district between Pemaquid and Nova Scotia — were suggestive of the old grant of Northern Virginia, or of that of 1620 to the New England council. It is possible, even in the Duke of York's patent of 1664, to see the faint sketch of a vast royal province which should envelop the New England colonies and by its growth realize the dreams which Sir Ferdinando Gorges had cherished throughout his life. The project originated among those who were the political heirs of Gorges and his supporters under the early Stuarts, and it was the first stroke after the Restoration which had as its object the revival of the ideals and policy which had led to the resignation of the charter of the New England council. It appears in history as a most important landmark in the development of that type of colonization of which Gorges was one of the earliest exponents.

When viewed in this light, it becomes evident that the establishment of the English province of New York was an event of profound significance, not only in itself, but in its relations to New England. English statesmen of the period, and those among their advisers who were most alive to American issues, were aware of this, and events as they progressed brought out the fact in ever clearer relief.

If we view colonial affairs chiefly in their political and ecclesiastical relations, and look at them from the standpoint of the Anglicans who controlled English policy during the years which immediately followed the Restoration, our judgment must be that New England, and especially Massachusetts, needed regulating. Even one who cared little for religious conformity or for Anglican predominance, but who was ready

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to insist upon the necessity of a genuine recognition by the colonists of English sovereignty, would also be ready to join in the demand that some steps be taken to bring Massachusetts into greater harmony with tendencies that were operative in the colonies generally. A due regard also to private rights would lead to a similar conclusion. Finally, there was even less probability of obedience to the acts of trade in New England than elsewhere. The attempt of Gorges and his friends, in the reign of Charles I, to force New England into the mould of the royal province had failed. During the period of the Commonwealth and Protectorate that section had been left almost to itself. With the restoration of the kingship, therefore, it was inevitable that some steps should be taken to establish relations between the English government and the New England colonies which would better facilitate the exercise of imperial control.

Early in 1661 petitions in considerable number from those who had grievances against Massachusetts were presented before the English government. They came chiefly from Edward Godfrey, Captain Thomas Breedon, Samuel Maverick, Archibald Henderson, John Gifford and associates who had been concerned in iron works, young Ferdinando Gorges, Robert Mason, and last of all from the Quakers.[1] The burden of Godfrey's complaint, and of that of Gorges, was the encroachment of Massachusetts on Maine. Godfrey in particular stated how for years he had vainly labored both in the colonies and in England to secure justice, but had failed. His defence of the rights of Gorges, which he claimed were coincident with the rights of the king and the true liberties of Englishmen, had occasioned the loss of much of his property. He now demanded justice. He charged that Massachusetts was aiming at independence, while as an inducement for interference in the interest of the crown he called attention to the fact that for purposes of trade the mouth of the Piscataqua was more valuable than all New England beside. Gorges dwelt upon the services of his grandfather in the cause of English colonization, on the patent

[1] Colonial Papers, 1660–1668, 17 *et seq.*; Colls. of N. Y. Hist. Soc. Fund Series, 1869, 16 *et seq.*

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which he had obtained from Charles I, and on the act of usurpation by which, when weakened through civil war at home, he and his heirs had been robbed of that grant. Robert Mason made similar representations concerning New Hampshire.

Captain Breedon submitted the book of laws of Massachusetts, called attention to the religious test, to the failure of the magistrates to take or administer the oath of allegiance. He found that many were opposed to acknowledging the king or owning any dependence on England. Yet, according to his exaggerated claim, two thirds of the soldiers were non-freemen and would be glad to have officers who bore the king's commission. Breedon dwelt with special emphasis on the fact that the regicides, Whalley and Goffe, had been sheltered in New England. Of this he was one of the first to give information in England.

In 1653, or thereabouts, John Gifford, agent of William Beck and other English undertakers in the iron works at Lynn, had been sued in the county court by his principals[1] for the sum of £13,000, the loss of which they claimed to have sustained because of errors and fraud in Gifford's accounting. In 1654 the case came on appeal before the general court, and several hearings were held. The case had gone against Gifford, and he had been held for brief periods as a prisoner and put under heavy bail. Maverick and others had furnished bail for him. Beck and his English associates now petitioned the home government for redress, alleging that for supposed debts their estates in Massachusetts had been seized, their agent had been imprisoned, and they had not yet been able to find a remedy.

The petitioners to whom reference has been made, with all their associates, joined in the request that a general governor should be sent to New England. The petitions from Quakers were signed by Nicholas Upshall, Samuel Shattuck, and others, and after describing the laws which had been passed against them and the sufferings which they and many members of their sect had endured, urged that their grievances be heard and redressed. In the political projects to which

[1] Mass. Col. Recs. IV[1]. 217, 219, 241, etc.; Colonial Papers, 1661–1668, 17.

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the other petitions were committed, the Quakers of course took no interest.

The only petition which was presented against any colony except Massachusetts, was that of Giles Sylvester, of Shelter island. He complained that the government of New Haven, because he refused to acknowledge its right of jurisdiction, had confiscated some three thousand acres of land which he had bought from the Indians.

Samuel Maverick was in England at the time of the Restoration and remained there during the four years that immediately followed it. His long residence in New England and large acquaintance with its affairs, combined as they were with a sober judgment, made valuable both the information he was able to give and the advice which accompanied it. A correspondence was early begun between him and the Earl of Clarendon, which was continued till about a year before the fall of that minister,[1] and of the important practical effect which followed this exchange of views there can be no doubt. During or about 1660 Maverick also prepared in manuscript an *Account of New England* which we may suppose was intended for the use of officials and that it also had an influence.[2] In his letters Maverick refers to the leading episodes in the early dealings between the home government and Massachusetts, and in such way as to show that his ideas were to an extent reflected in the missives which were sent from the king to that colony. During the period of the Restoration nothing comparable with this relationship arose except in the case of Edward Randolph; while in personal qualities and balance of judgment the comparison shows results decidedly favorable to Maverick.

The ideas and course of policy which were urged by Maverick upon Clarendon were an elaboration of those set forth in the "Child Memorial" of 1646,[3] with the addition that, in connection with the needed regulation of New England

[1] The letters of Maverick to Clarendon are printed among the Clarendon Papers, Colls. of N. Y. Hist. Soc. Fund Series, 1869. Some are also printed in N. Y. Col. Docs. III. [2] Printed in Proc. of Mass. Hist. Soc. for 1884.

[3] See Vol. I. of this work, p. 257. An elaborate study of this manifesto, in all its historical connections, is in preparation by E. S. Joy.

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affairs, the power of the Dutch on the Hudson and Delaware should be overthrown and that the two enterprises should be undertaken together. In sketches of the past doings of Massachusetts which he repeatedly submitted to the minister he referred to all the instances of its harshness and intolerance from the beginning, not omitting any important events which indicated a dislike of the kingship in England or a disposition to oppose it. As in 1646, so now, he insisted on the necessity of changing the conditions of citizenship so as to admit all freeholders to active political rights, and thus broadening the religious system so as to secure equal privileges to Protestants generally. In reference to the question of admission to baptism he defended the principle of the half-way covenant, which Massachusetts, by the way, was just adopting. The necessity of enforcing the right of appeal he never forgot, while he called attention to the inconsistency between the oath of fidelity and the obligations of allegiance. Going further, he urged a general reform of the laws of Massachusetts, the rectifying of her boundaries, and the assumption of immediate control over her militia by the king. As the means by which to carry all those measures into execution, he urged the appointment of a royal governor or the sending of a commission, and that the royal appointees should be accompanied by a small armed force for the reduction of New Netherland. He did not look for resistance of consequence in either colony, for in the one the hold of the Dutch was too weak to make it possible, and in the other the numerical superiority of the non-freemen was so great that the supporters of the magistrates and elders would be forced to yield. As a result of the regulation of New England affairs, a way, he believed, would be opened through which the crown could secure a revenue from those colonies in the form of quit rents, while its influence would be enhanced in every way. The policy which the home government was now to follow could hardly have been pointed out more aptly, while the share which Maverick was to bear in its execution not only rounded out his career, but curiously illustrates the persistence of many of the earliest tendencies in New England history.

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A comparison of these petitions and memorials makes it clear that, however much the complainants might exaggerate their hardships and slur over or conceal the motives which gave apparent justification to the conduct of Massachusetts there was need of inquiry and possibly of interference by a sovereign power. The presumption was raised that private rights had been violated. The charge was made that certain public duties were being neglected. But for the satisfactory treatment of these delicate questions both intelligence and a sense of fairness were necessary. And it must be admitted that it was doubtful whether English officials of the type which controlled affairs after the Restoration would possess both these qualities to the requisite degree.

When the king returned and monarchy was again set up in England, John Leverett was still resident there as agent for Massachusetts. Endicott was governor at Boston. In[1] September, 1660, Leverett wrote to Endicott stating that complaints against Massachusetts had been submitted to the king by Godfrey and others, and there was talk about sending over a royal governor. In the absence of express orders, Leverett did not feel authorized to appear at court on behalf of the colony, but he had received words of sympathy from Lord Say and Sele and from the Earl of Manchester. As soon as his letter reached Boston, the general court sent its first addresses to the king and parliament and resolved to associate Richard Saltonstall and Henry Ashurst with Leverett[2] in the agency. The address to the king, which was prepared with the assistance of the clergy, was notable as the first of a series of such papers which emanated at this period from the general court. Its biblical phrases and its exaltation of the royal dignity, its almost fawning humility, might well have befitted a petition from the chosen people, when in exile, to their Persian monarch. But behind the expressions of humility appeared the proud consciousness that the Puritan was able to justify, not only his removal from England, but his course of policy since that event.

The limits beyond which the colony would not voluntarily

[1] Hutchinson Papers, II. 40.

[2] Mass. Col. Recs. IV[1]. 450; Hutchinson Papers, II. 43–51.

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go in its submission to the king, were stated in the instructions which were now sent to the agents, and to this position it adhered throughout the twenty years of controversy which were to follow. It insisted that the Massachusetts system of government, both in church and commonwealth, was consistent with the charter. If that system were changed, as it necessarily must be if any other power was imposed upon them, the object which had been sought by the removal into New England would be defeated. To this they would never consent. Furthermore, they insisted that appeals to English tribunals, whether in civil or criminal cases, should never be permitted. The reasons assigned for this were that the expense attending such process would be intolerable, and the practice would bring authority within the colony into contempt. Behind this assertion lay doubtless the feeling that a concession on this point would also imperil the church-state system. That system was the citadel every approach to which should be strongly guarded.

After asserting their readiness to defend the colony against the specific charges which had been made, and expressing the desire that the ordinance of 1642 exempting the colony from English customs duties might be renewed, the court closed with an injunction concerning the practical management of its case by the agents. "It is our meaning," they say, "that if in publick you or either of you be called to answer to these or to any other particulars, that you give them to understand that we would not impower any agent to act for or answer in our behalfe, because wee could not foresee the particulars wherewith wee should be charged, but these are only private intimations to yourselves, which wee desire you to make use of for our indemnitie as you best may in a more private way and personall capacitie." This instruction to agents was repeated on many another occasion during the later controversy, and its effect always was to block proceedings and cause indefinite delay. It indicated that Massachusetts was again pursuing the tactics of passive resistance, and that it chose to define the relations which existed between itself and the home government as essentially diplomatic. Nothing was more irritating to the officers of the

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crown than the discovery of this fact. It clearly revealed the truth of Clarendon's statement, that the New England colonies were hardening into republics.

There were, however, one or two minor matters in which an immediate show of submission might serve a good purpose, and of these the magistrates at once availed themselves. One was the suppression of the Rev. John Eliot's book, the *Christian Commonwealth*, which was supposed to contain the Fifth Monarchy heresy, for which the fanatic Venner had lately suffered in London. A similar opportunity was offered by the presence of the regicides, Whalley and Goffe, in New England. The statements of Breedon and Crown concerning the favorable reception which was given these officers in Boston and vicinity was correct. The knowledge of this made the officials of Massachusetts anxious to relieve themselves and the colony of this new cause of suspicion. Therefore, when a royal warrant for the arrest of the regicides arrived, Endicott commissioned Kirke and Kellond — one a merchant and the other a shipmaster, and both recently arrived from England — to search for them. Whalley and Goffe had already withdrawn into the jurisdiction of New Haven. There they received protection, and Governor Leete was able so to delay the proceedings of Kirke and Kellond, that the regicides made good their escape into the wilderness. When the danger was past, Secretary Rawson wrote to Governor Leete warning him of the peril of disobeying the king's warrant for the arrest of the regicides.[1]

Early in February, 1661, as soon as the first address from Massachusetts had been received, the king sent a gracious letter assuring the people of his high regard for the colony, and of his determination that it should share equally with the rest of his dominions in his moderate ecclesiastical policy, and in the measures for the encouragement of trade which he intended to undertake.[2] When this letter was received in Massachusetts, a day was specially set apart for thanksgiving. But at the same time a committee of four magis-

[1] Hutchinson Papers, II. 52–60; Colonial Papers, 1661–1668, 27. Kellond's account is in Colls. of N. Y. Hist. Soc. Fund Series, 1869, 46.

[2] Hutchinson Papers, II. 51.

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trates, four deputies, and four elders was appointed to meet during the recess of the court and consider "such matter or thing of public concernment touching our patent, laws, privileges and duty to his Majesty, as they in their wisdom shall judge most expedient," and report at the next session. This action showed that the Massachusetts leaders considered themselves at the beginning[1] rather than at the end of a struggle. This committee was asked by the court to define the liberties of Massachusetts and also the duties which were imposed upon its people by their obligation of allegiance to the king.

Only a brief period elapsed before the general court met again in special session. The committee then submitted its replies to the questions which it had been asked to consider.[2] In accordance with many precedents they appealed to the royal charter and claimed for the colony the right to the institutions of government for which it provided. Massachusetts, they said, was a body politic, and was vested with power to make freemen. After describing in outline the institutions for which the charter provided, though without stating that they had come into existence in Massachusetts in their present form as the result largely of removal and not of royal grant, the committee declared that any imposition which was prejudicial to the colony and inconsistent with any just law of the colony that was not repugnant to that of England, was an infringement of its rights. Coming to the subject of allegiance, they interpreted it somewhat more carefully than was done in 1646. Not only did they consider the colonists bound to defend the territory which had been granted them from foreign attack, but to endeavor as they were able the preservation of the king's person, his realm and other dominions, and to reveal and thwart all conspiracies against them. It also included, they said, the obligation to seek the peace of king and nation by punishing crimes and propagating the gospel within the colony, "our dread sovereign being styled 'defender of the faith.'" Those who were flying from justice in England might not find shelter in Massachusetts, while the colony would plead with the king against all who

[1] Mass. Col. Recs. IV². 24. [2] *Ibid.* 25.

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should attempt the violation of its privileges. With this carefully guarded explanation of the rights and obligations of the colonists, the accession of the king was proclaimed in August. The law of Massachusetts permitting free access to her harbors of ships which came for trade from other countries was repealed. An order was issued instead that such bonds should be taken from all shipmasters and returns made as were required by the navigation act of 1660,[1] but as no custom house was established the order was without practical result.

It was during the months which immediately followed the despatch of the king's missive, that the petitions to which reference has been made were presented to the English government. They made a strong impression on the council for foreign plantations, though its members realized that only one side had yet been heard. An attempt, however, had been made to get some information from Leverett, but he had said that his agency was at an end. Neither he nor those who had been appointed with him appear to have acted. Leverett, indeed, returned to Boston in the summer of 1662. He was reported[2] in England to have declared that, before they would admit of appeals the colonists would deliver New England up to the Spaniard. His usefulness as an agent could scarcely have survived such a statement as that. This the council interpreted as meaning that Massachusetts had purposely withdrawn from communication. They therefore presented a report to the privy council which was decidedly unfavorable to Massachusetts[3] and prepared a sharply worded letter to be sent to the colony. They also suggested that Captain Breedon would be a good agent to intrust with its delivery. But Breedon was soon discredited by a revelation of the fact that under false pretences he had just obtained a commission as governor of Nova Scotia.[4] The privy council, however, without regard to the suggestion about Breedon, took the

[1] Mass. Col. Recs. IV[2]. 31, 32.

[2] Maverick to Clarendon, Colls. N. Y. Hist. Soc. Fund Series, 1869, 30; Hutchinson, Hist. of Mass. I. 247; Colonial Papers, 1661–1669, 88.

[3] Colonial Papers, *ibid.* 24, 26. [4] *Ibid.* 79–85.

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business into its own hands, as one which demanded further investigation and more patient handling. For a considerable time no further action was taken. Then, in September, the royal order, to which reference has been made in a previous volume, was issued, that the Quakers who were in prison under sentence of death or other corporal punishment should be sent to England for trial. This message was delivered by the Quaker, Samuel Shattuck; but, though the execution of the laws was for a time suspended, no Quakers were sent to England for the purpose mentioned. Such a course would have implied the existence of a right of appeal, which Massachusetts was resolved never to recognize.

Late in 1661 the general court resolved, though contrary to the urgent protest of Endicott and Bellingham, the governor and deputy governor, to send agents to England. Simon Bradstreet and the Rev. John Norton were selected.[1] Two committees were appointed, one to raise by subscription the necessary funds, and the other to prepare an address to the king, letters to friends of the colony in England, and additional instructions for the agents. Both met with difficulties. The funds were raised, though after considerable effort. The other committee found both the agents averse to going. Besides the perils of a winter voyage, and the delicate health of Norton, the task was considered a difficult, if not a hopeless, one. As both had been prominent actors in recent events — Norton the leading clerical antagonist of the Quakers — they not unreasonably feared detention, or even imprisonment, in England. Whatever occurred, the agents could scarcely avoid incurring odium in Massachusetts. The discussions by which they sought, so far as possible, to secure themselves against loss or disaster continued for nearly two months. When finally Bradstreet and Norton sailed, they took with them instructions to answer all arguments made in England against the colony, to refute all scandals, to represent its people as loyal subjects, and to ascertain, as far as possible, the king's intentions respecting them. But, added the general court, "you

[1] Mass. Col. Recs. IV². 37, 39; Hutchinson Papers, II. 65–97.

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shall not engage us by any act of yours to anything which may be prejudicial to our present standing according to patent." Captain Thomas Hull, the mint master, accompanied the agents to answer complaints which had been made respecting the coining of money in Massachusetts. But as soon as the agents had gone, the court ordered the first bullion that came to hand to be coined into twopenny pieces of silver.

The mission did not prove so disastrous as was feared. The agents were politely received, and, though confronted by some of the leading Quakers, their cause suffered no important injury. They were able to return after an absence of little more than six months, bringing with them a letter from the king.[1] The opening sentences of this missive contained a gracious pardon for all possible deviations from the patent in the past, as due rather "to the iniquity of the times than to the evil intentions" of those who bore authority in the colony. The king also expressed his confirmation of the patent and of all the privileges which existed under it. But when he came to speak of the future, the royal utterances were not so welcome to the colonial authorities. The king commanded that the oath of allegiance should be taken and observed, and that justice should be administered in his name. As the principal object of the colonists in securing their charter was to obtain freedom of worship, they were directed to guaranty the same to any Anglicans who might reside within the colony. No one should be excluded from office because of the opinions he held, and all freeholders of competent estates, who were orthodox in religion and not vicious in conversation, should be entitled to vote in the election of all officers, civil and military. If the number of assistants required by the charter was found too great, it might be reduced to ten. As it had been necessary to make a sharp law against Quakers in England, no objection would be made if the like were done in Massachusetts. The requirement that all laws and ordinances, made during the late troubles, which were derogatory to the king's government should be repealed

[1] Hutchinson Papers, II. 100.

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would also cause little difficulty, for none which came expressly under that designation had been found.

Notwithstanding the mild tone which characterized much of the royal missive, it was evident that the crown insisted upon some changes which would ultimately curb the independence of Massachusetts and make a breach in her system of uniformity. The struggle was in reality just beginning, and as it proceeded the royal letter of 1662 was frequently referred to as an authoritative statement of the purposes of the English government relative to Massachusetts. For this reason the work of the agents appeared to the strict Puritans of the colony to be a failure. Those who at the outset had opposed the mission considered their views to have been justified. The agents, it is true, were not well qualified for their task; but, whoever they may have been, they would have found themselves almost powerless at the English court. No one could have accomplished what the Puritan oligarchy really desired.

The general court at its next session, in obedience to the express command of the king, ordered the publication of the royal letter. It also ordered that all processes should issue in the name of the king. Somewhat later it was enacted that the returns of shipmasters entering the colony should be taken before they were allowed to depart, as required by the navigation act. After a special order from the privy council officers were appointed to see that the navigation act was enforced and the necessary bonds taken.[1] The court also felt justified in reviving the laws against Quakers.

The case set forth in the petitions of the Mason and Gorges heirs made absolutely necessary an inquiry into the doings of Massachusetts in northern New England. In the petitions,[2] especially of Robert Tufton Mason, not only was the encroachment of Massachusetts on their territory described, but new currency was given to the notion which Sir Ferdinando Gorges held, that the Massachusetts charter had

[1] Mass. Col. Recs. IV[2]. 58, 59, 73, 87; Colonial Papers, 1661–1668, 144.

[2] Belknap, History of New Hampshire, I. App. Nos. 12 and 13; Colls. N. H. Hist. Soc. I. 327, 329; Colonial Papers, 1661–1668, 75.

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been procured through fraud and was therefore void from the beginning. Some false statements were made concerning the means which were used by Massachusetts in order to get possession of the territory. A committee of reference, of which Mason himself was a member, presented to the king an *ex parte* report in which they, of course, fully supported the territorial claims of Mason and Godfrey. The attorney general, Sir Geoffrey Palmer, also reported in favor of Mason's claims.

While the cause of the proprietors was being thus urged in England, in May, 1661, Ferdinando Gorges [1] appointed his relative, Francis Champernowne, with Henry Josselyn, — who had defended the Gorges claims in times past, — Nicholas Shapleigh, Robert Jordan, and others, commissioners to proclaim the king and reëstablish proprietary government in Maine. A public meeting was held at Wells in December and resolutions in accordance with the commands of Gorges were adopted. A representative assembly, called a general court, was summoned to meet at the same place the following May. This roused Massachusetts to action. Her commissioners, Denison, Hathorne, and Waldron, were ordered to reduce Maine again to submission. When, in May, 1662, a general court which was called under Gorges' authority and attended by chosen "trustees" met at Wells, the Massachusetts commissioners interfered. They summoned the inhabitants before them. They wrote many times in an imperious tone to the commissioners and traders to cease from their disorderly acts and submit. The representatives of Gorges refused to submit. Then a conference was held and a compromise was reached. According to this a court was to be held at York the following July by Henry Josselyn and Major Shapleigh, representing Gorges, and Captain Waldron and Captain Pike, representing Massachusetts. Writs were to be issued in the king's name. Massachusetts, however, did not resign her jurisdiction, but continued her commissioners and issued her orders as usual [2] for the holding of county courts. In June, 1663, her commissioners

[1] *Ibid.* 63, 90.

[2] Mass. Col. Recs. IV². 70, 77, 103.

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were ordered to arrest any one whom they found in Yorkshire acting under authority other than that of the king and Massachusetts. In Norfolk county, which included the New Hampshire settlements, no attempt was made at this time to oppose the jurisdiction of Massachusetts.

The political and religious exclusiveness of Massachusetts and the encroachment of that colony upon the territory of the Mason and Gorges heirs furnished the chief reasons for the interference of the king in New England affairs. But there were also other conditions and questions which needed attention. In internal organization and to a very large extent also in spirit and purposes, Plymouth, Connecticut, and New Haven were one with Massachusetts. None of these colonies proclaimed the king until the middle or latter half of 1661. The Narragansett Settlements stood apart, and their many controversies with neighboring colonies inclined them to take shelter under English protection. They proclaimed the king's accession in October, 1660.[1] It is true that the type of thought and feeling among the settlers of Providence and Rhode Island was Puritan. The tendency among them toward local independence was as strong as that shown elsewhere in New England. Their institutions were taking a form which was similar to that of the other New England colonies. But the controlling idea of the inhabitants was the desire for perfect religious liberty. This was a condition which both Charles II and James II would feel inclined to cherish. The Narragansett Plantations offered one of the avenues through which royal influence could gain a foothold in New England. That was clearly perceived, and furnished a strong reason, not only for the grant of the Rhode Island charter, but for royal interference in the boundary disputes by which the very existence of that colony was threatened. Still other boundary questions were raised by the grant of the New York charter, which seriously affected Connecticut, and by the issue of the Connecticut charter, which similarly affected New York.

[1] R. I. Recs. I. 432; Mass. Recs. IV². 30; New Haven Recs. II. 419, 422; Diary of John Hull, in Arch. Am. III.; Kaye, English Colonial Administration under Lord Clarendon, J. H. U. Studies, XXIII, 22–26.

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As all the colonies of southern New England had been founded by private initiative and that in part since the withdrawal of royal influence, it was reasonable that some inquiry should be made concerning the attitude which they held toward the crown. The entertainment of the regicides within New Haven and their final escape made such a course seem all the more necessary. The passage of the acts of trade and the adoption by the home government of a well-defined commercial policy made it necessary to inquire closely into the means which the colonies were taking for its enforcement.

Since the crown had no officials of its own appointment resident in New England, nor any who were under the king's instructions or who were bound to report the condition of the colonies to him, the information could be obtained only through a royal agent or commission. A decade before commissioners had been sent by parliament to "reduce" disobedient colonies. The diplomatic attitude which Massachusetts had assumed now made another resort to a device of this kind especially necessary. Resort to a measure like this was an easy first step in the application of royal pressure which was intended to force the New England colonies, and especially Massachusetts, out of a position which was anomalous, and to bring them into line with colonial development in general. As early as September, 1662, the lord chancellor declared in the committee for plantations that the king would speedily send commissioners to regulate the affairs of the colonies. The Duke of York would consider the choice of fit men. The following April the king declared in an order in council that he intended to preserve the charter of Massachusetts, and would send commissioners thither to see how the charter was maintained and to reconcile differences which existed among them.[1]

The men who, in 1664, were selected for the delicate task were Colonel Richard Nicolls, Sir Robert Carr, George Cartwright, and Samuel Maverick. Nicolls's qualifications were of a high order, and have been sufficiently indicated in another connection. The selection of Maverick as a member of the commission was a natural result of his services and of

[1] Colonial Papers, 1661–1669, 110, 128.

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the friendly relations in which he stood toward Clarendon. His knowledge of the case was such as to make him expert; he was also a colonist as well as an Englishman. But his lifelong opposition to Massachusetts Puritanism had made him a partisan and to that extent unfitted him for the task to which he was now appointed. Carr was one of those adventurers, undistinguished by principle or ability, whom the home government was too ready to appoint to posts in the colonial service. Cartwright apparently possessed ability and honorable intentions, but he lacked qualifications in point of knowledge and tact. Taken as a whole, the appointments were as wise as under the circumstances could reasonably be expected.

Two sets of instructions[1] were given to the commissioners, one relating to Massachusetts and the other to the rest of the colonies. Both were elaborate and were drawn with ability. The former was the more minute, because in Massachusetts lay the most difficult part of the task. The commissioners were ordered, as soon as they arrived, to deliver to the governor of Massachusetts the letter which they brought from the king; also their commission and such instructions as it seemed wise to make known. Attention was repeatedly called to the fact that the chief object of the English government in sending the commissioners was, if possible, to induce Massachusetts to obey the commands of the king as expressed in his letter of June, 1662. The commission, however, seemed to imply something beyond this; for it was said that full authority was given the commissioners "to hear . . . and determine all complaints and appeals in all cases and matters, as well military, as criminal and civil and proceed in all things for the providing for and settling the peace and security of the said country," according to their discretion and instructions. In the instructions, however, they were warned against hearing any cases except those which seemed to involve an evident violation of the charter. They were not to interrupt the ordinary course of justice. In reference to boundary disputes, they were to make only temporary adjustments, reserving final judg-

[1] N. Y. Col. Docs. III. 51–65.

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ment to the king. They were specially cautioned also to conciliate the people and leaders, to assure them that the king had no intention of diminishing any right to which they were entitled under the charter. Religious freedom was in no way to be infringed, but it must be guarantied to Anglicans. Permanent residents of good and honest conversation must also be admitted to full political rights. In short, inquiry should be made to ascertain whether or not the requirements of the king's letter of June, 1662, had been complied with.

Other objects of the commission were to learn if the regicides were still protected in the country; to secure, as was contemplated in 1654, the help of New England in the conquest of the Dutch; to ascertain as fully as possible the religious, political, and economic condition of the colonies, also the state of their defences, so that this information might be used as a guide to further steps of policy; to see if the acts of trade were enforced, though the colonists were to be made to understand that loyalty, rather than gain, was for the present desired. Massachusetts was to be induced, if possible, to submit to a renewal of her charter, so that in certain respects it might be improved. It was the desire of the king, revealed by the instructions, that he might have the appointment of the governor and the control of the militia. In the commission provision was made that, when business was transacted, Nicolls should always be present and have a casting vote in the case of a tie.[1]

The commissioners, accompanied by the armament which was to be used in the reduction of New Netherland, arrived at Piscataqua and Boston in July, 1664. When all the members had reached Boston, the king's letter — which was very conciliatory in tone — and the commission were delivered to the governor and council. That part only of the instructions which related to the attack on New Amsterdam was then made known. The magistrates promised to call a session of the general court early in August and submit to it the question of raising troops to aid in the contemplated expedition. The troops were raised, though their help was not

[1] N. Y. Col. Docs. III. 64, 114.

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needed. The court at this session also made that formal change in the religious test to which reference has been made in the discussion of the relations between church and commonwealth in Massachusetts.[1] After completing these preliminaries the commissioners departed for the Hudson and the Delaware.

The spirit of violent distrust with which the commission was regarded in Massachusetts is shown by the address which was sent to the king by the general court of October, 1664.[2] After dwelling, as was always the case, on the services and privations of the fathers in founding the colony, and stating that the court had already done all to satisfy the king which could be done consistently with conscience and their liberties under the patent, they continued: "But what affliction of heart must it needs be unto us, that our sins have provoked God to permit our adversaries to set themselves against us by their . . . complaints and solicitations, . . . and thereby to procure a commission under the great seal, wherein four persons (one of them our knowne and professed enemy) are empowered to heare, receive, examine and determine all complaints and appeals . . . and to proceed in all things, for settling this country, according to their good and sound discretions, &c. Whereby, instead of being governed by rulers of our own choosing (which is the fundamental privilege of our patent) and by lawes of our owne, wee are like to be subjected to the arbitrary power of strangers, proceeding not by any established law, but by their own discretions. And whereas our patent gives a sufficient royal warrant and discharge to all officers and persons for executing the lawes here made and published, . . . wee shall not now be discharged and at rest . . ., when we have so far executed and observed our lawes, but be liable to complaints and appeales, and to the determinations of new judges, whereby our government and administrations will be made void and of none effect. And thô wee have yet had but a

[1] Vol. I. of this work, p. 212. McKinley, Suffrage in the English Colonies, 324, printed in Pubs. of University of Pennsylvania, History Series; Colls. N. Y. Hist. Soc., Fund Series, 1869, 83, 100.

[2] Mass. Col. Recs. IV². 129; Hutchinson, Hist. of Mass. I. App. 460.

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little taste of the words or actings of these gentlemen, that are come over hither in this capacity of commissioners, yet we have had enough to confirme us in our feares, that their improvement of this power . . . will end in the subversion of our all." "If these things go on," they continue, at once anticipating the worst, "your subjects here will either be forced to seeke new dwellings, or sinke and faint under burdens that will be to them intollerable." Enterprises of all kinds will be discouraged, the inhabitants driven to extremities, and the plantation ruined. But the king in the end will be the greatest loser of all. "It is indeed a grief to our hearts, to see your majesty put to this extraordinary charge and cost about a business, the product whereof can never reimburse the one halfe of what will be expended upon it." Not only had erroneous representations been made about dissensions which were alleged to exist in the colony, but the amount of wealth which was to be had there had also been greatly exaggerated. "Imposed rulers and officers will have occasion to expend more than can be raised here," and far less will be obtained than would be accounted by one of these gentlemen as a considerable accommodation. It is little wonder that these protests and insinuations, gratuitous as they were at this stage of the business, should have drawn reproof even from the king and severe replies from the ministers. It stamped the errand of the commissioners in New England as almost hopeless from the beginning.

Until late in the autumn the commissioners were occupied with the conquest and pacification of New Netherland. They then undertook the difficult task of fixing the boundary between Connecticut and New York. Questions of boundary had been left unsettled when the royal charter was granted to Connecticut in 1662. The document had been allowed at that time to pass the seals, because Winthrop promised submission "to any alteration" in the boundaries of the colony which might later be made by commissioners whom the king even then was intending to send "into those parts."[1] The question of the limits of Connecticut on the south and west had been made more complicated by the issue of the

[1] N. Y. Col. Docs. III. 55.

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charter to the Duke of York in 1664. Connecticut claimed Long Island because in her charter it was stated that her southern boundary should be the sea. But in the charter of the Duke of York it was expressly stated that Long Island should form a part of his province. By the charter of 1662 Connecticut had been given a westward extension to the South Sea. The Connecticut river, on the other hand, had been specified as the eastern boundary of the Duke of York's grant. Nearly all of the settlements in Connecticut, together with the whole of New Haven colony, lay west of the river. The historical connection of both New Haven and Connecticut with eastern Long Island had also been intimate. On the other hand, if Connecticut was allowed unlimited western extension, the development of New York would be forever crippled. Overlapping claims like these could be adjusted only by the crown or its representatives — the same power which by its carelessness or connivance had permitted them to originate.

Governor Winthrop, with four agents appointed by the general court of Connecticut, and two invited representatives from the towns of eastern Long Island, met the commissioners at New York in November, 1664, for the settlement of the boundary question. That part of it which related to Long Island was soon adjusted, for it was impossible to dispute the positive declaration of the Duke of York's charter. But the question of the western boundary of Connecticut was full of difficulties. New Haven had not yet submitted to Connecticut. But in view of the location of the Connecticut towns, and of the whole past history of that colony, it was impossible for the commissioners to insist upon the provision of the Duke of York's patent. Had they done so, the prospect of success in later negotiations in New England would have been destroyed. Nicolls at least was clear on this point, and an agreement was reached according to which the boundary was to run north-northwest from Mamaroneck creek to the Massachusetts line, approaching at no point nearer to Hudson's river than a distance of twenty miles. But Nicolls and his associates were deceived, for the starting point was only about ten miles from the Hudson, and if the

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line were extended north-northwest, it would cross the Hudson near Peekskill and reach the latitude of the southern boundary of Massachusetts near the northwest corner of Ulster county. Because of this error the agreement was never ratified by the Duke of York or by the king, and many years of controversy followed before a final settlement was reached.[1] But at the same time this conference, taken in connection with the grant of New York to the duke, had an important bearing on the history of the sea-to-sea patents, so far as such existed in New England. The commissioners, in their report to the king, declared that a line drawn twenty miles east of Hudson river was the western limit of both Connecticut and Massachusetts.

In January, 1665, after the consideration of the Connecticut boundary was ended, Cartwright and Maverick repaired to Boston. Later they were joined by Carr, though he lingered on the Delaware until the patience of his colleagues was nearly exhausted. Nicolls was unable to visit New England until the beginning of May, when he shared in the important negotiations of that month with the magistrates and general court of Massachusetts. During the interval the three commissioners were forced to live among a population the majority of which viewed them with suspicion or open hostility.[2] "This day," writes Cartwright, "a Quaker (my country woman) told me before Capt. Breedon, she had heard severall say yt I was a papist and yt Sr Rob. Carr kept a naughty woman, and examined her if I had not kept one too, or if she knew me not to be a papist. Mr. Maverick they declare to be their profest enemy. Many factious speeches fly up and down. This day (they say) here is a secret council and that all the ministers within 20 miles are called to it. . . . I am sure you know in what condition I am in; though you seem to deny me your assistance, yet let me have your pity, and I will doe my utmost." With

[1] N. Y. Col. Docs. III. 55, 106, 231; N. Y. State Library Bulletin, Gen. Entries, 134, 135; Report of N. Y. Boundary Commission; Conn. Col. Recs. I. 415, 427, 433, 435; Colonial Papers, 1661–1668, pp. 341, 346.

[2] See the letters of Cartwright and Maverick to Nicolls, N. Y. Col. Docs. III. 83–94.

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a sure instinct for the probability that in some way money would be levied upon the colony, if the royal policy was executed with thoroughness, the rumor was circulated among the people that a quit rent of a shilling an acre was to be collected on the land and about £5000 annually taken besides. It was also reported that the discipline of the churches would be infringed and the processes of government interfered with by the hearing of appeals. Complaints were uttered of the expense which the entertainment of the commissioners was imposing on the colony, while the commissioners themselves were trying to eke out their stipend from the king so as to make it last during their prolonged stay. Cartwright wrote that he had not gone to dinner with a townsman since he came to Boston, "suspecting them to be as I fear they are," but he treated all who visited him as civilly as he could. Maverick declared that Cartwright had been "too retired." He himself had spent three weeks visiting friends in the chief Massachusetts towns and he believed he had removed the prejudices of many. He hoped he had not been "over sociable."

Finding the spirit of opposition in Massachusetts so strong, the commissioners thought it best to begin with the adjustment of affairs in Plymouth, Rhode Island, and Connecticut, so as to return to Boston, if possible, with the prestige of success. In February they went to Plymouth. Thence, early in March, they passed through Rhode Island to Connecticut, returning by the Narragansett country and reaching Boston again about the middle of April. To the magistrates of each of these colonies substantially the same propositions were submitted which were contained in the king's letter of 1662. They were, that all householders should take the oath of allegiance and that justice should be administered in the king's name; that all who were of "competent estates and civil conversation" should be admitted to the rights of freemen; that all persons of orthodox faith and upright lives should be allowed freedom of worship and of organizing congregations of their own; and that all laws derogatory to the king, which might have been passed during the "late troublesome times," should be

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repealed. Rhode Island was also asked to provide suitably for its own defence.[1]

As these requirements in nearly all respects conformed with the practice of the colonies of southern New England, they were accepted without opposition. At the suggestion of Plymouth the demand that the privilege of forming new congregations should be granted was confined to those who had secured a minister of their own. In Rhode Island an "engagement" was accepted in lieu of the oath. To the additional suggestion that Plymouth should seek to obtain a new charter, that colony demurred. Closer connection with the home government, even through an agent, was not then desired.

Rhode Island was very compliant, and while there the commissioners freely heard appeals. They had been fully instructed to inquire into the conflicting claims to the Narragansett country, and this part of their duty they fulfilled to the letter, both Samuel Gorton and Massachusetts presenting long statements full of mutual recriminations.[2] The claim of the Atherton company was examined and found invalid.[3] In order to save the Narragansett country to Rhode Island, the commissioners at first commanded the various squatters who had come in from Massachusetts and Connecticut to remove. Later, however, this command was revoked and the question of their rights was referred to the king. From one of the Indian sachems who had participated in the surrender of the country to Charles I, twenty years before, the commissioners obtained an acknowledgment of the deed. Relying on this, they took the Indians and their country into the king's protection, naming the district the King's Province. The magistrates of Rhode Island were empowered to administer justice in the region until the king's pleasure could be further known. In this business, and especially in efforts to dispossess Pumham, that ancient and wily protégé of Massachusetts, Sir Robert Carr showed unusual activity, and incidentally came into relations for the moment both

[1] Plym. Recs. IV. 85; R. I. Recs. II. 110; Conn. Recs. I. 439, in each case with the context.

[2] N. Y. Col. Docs. III. 55; Mass. Recs. IV^2. 253, 255.

[3] *Ibid.* IV^2. 174–176. See especially Cartwright's account of this, Colls. N. Y. Hist. Soc. Fund Series, 1869, 90–93.

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with the Apostle Eliot and with Roger Williams.[1] Though the settlement of the bounds of Rhode Island involved questions of too great complexity for the commissioners to determine, they performed an invaluable service for that colony by giving final notice to Massachusetts that encroachments toward the south would no longer be permitted. They recognized the fact that the possession of the Narragansett country was necessary, one might almost say, to the continued existence of Rhode Island as a distinct colony; and by placing its magistrates in charge of the district under the king's protection the commissioners aptly served both the interests of the crown and those of Rhode Island. The settlement of Massachusetts people in the Pequot country, under claims said to have originated in conquest, the commissioners looked on with equal disfavor; but they did not give any express recognition to the Hamilton claim against Connecticut, because it was not confirmed by actual settlement. When they returned to Boston the commissioners, with reason, congratulated themselves on the success which had attended their efforts in southern New England. Opposition they had met with nowhere, while in Rhode Island they had found an interest sufficiently strong, they hoped, to furnish a leverage against Massachusetts. Their doings in the south would add no recommendation to them in the eyes of the Bay Colony, for it suggested too clearly what was likely to be attempted on the Piscataqua and even in Massachusetts itself.[2]

Before the departure of the commissioners from Boston to visit Plymouth and the other colonies, in obedience to

[1] An explanation of Carr's unwonted activity appears in a subsequent letter of his to one of the secretaries of state, Morrice or Nicholas. It seems that he desired a grant of much of the southern or southeastern portion of the Narragansett country for himself "to settle upon." "That title which I had gotten at Delaware," he writes, "and for which I had hazarded my life, I am told is given away, and one is now come to take possession of it." Apparently Berkeley and Carteret, by staying at home, had profited more surely from the king's favor than had Sir Robert by risking his life in the colonies. N. Y. Col. Docs. III. 109.

[2] R. I. Recs. II. 60, 127, 132–138, 161; Trumbull, History of Conn. I. 530; Mass. Recs. IV². 229 *et seq.*; N.Y. Col. Docs. III. 87, 97.

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instructions and in order the better to meet exaggerated reports concerning the king's intentions and their own, they asked the magistrates to call all the inhabitants together on the day of the court of election, early in the following May. There they might learn directly and without mistake "his Majesty's grace and favor to them."[1] Attempts, like this, to appeal over the heads of the magistrates and general court to the people at large were naturally offensive, though in their reply the governor and assistants did not refer to this aspect of the case. They said that they could see no reason for this proposal, while to draw the people away from their houses would leave the colony exposed to Indian attacks; "all could come if they would — there was no prohibition." Cartwright, in one of his characteristic statements, declared the proposal to be so reasonable that he who would not attend was a traitor. And before they left the commissioners sent a letter to some of the non-freemen advising them and their neighbors to be present at the next court of election and hear a message direct from the king, as "the best way to prevent all slandering of his Majesty and all misapprehensions in his good subjects and all prejudices from us."

On the eve of the election the commissioners returned, Nicolls now at last appearing with them. Endicott had just died; Bellingham was the acting governor. Letters had lately been received from Secretary Morrice and the lord chancellor, in reply to the last communication from the general court. It was said that it had been unfavorably received by the king, as "the contrivance of a few persons who had been too long in power"; that they were unreasonably jealous of the king, who had no intention of infringing their charter, but who must institute an inquiry because of the complaints which had come from various quarters. Clarendon wrote in much

[1] Mass. Recs. IV². 173. The sources for what follows are mainly the official account of the dealings between Massachusetts and the commissioners entered by order of the general court in the Recs. IV². 157–273; and the Danforth Papers, in 2 Mass. Hist. Colls. VIII. 55–96. Among the Clarendon Papers, in Colls. N. Y. Hist. Soc. Fund Series, 1869, 88 *et seq.*, is a criticism by Cartwright of many of the statements in the official account by Massachusetts. He says that Maverick suggested inviting in the inhabitants generally and softens somewhat the account of his own comment on that occasion.

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the same strain, declaring "it will be absolutely necessary that you perform and pay all that reverence and obedience which is due from subjects to their king and which his Majesty will exact from you." The commissioners also, as they began the negotiation, delivered a statement of their own, protesting in language of needless irritation against the alleged slanders which had been circulated about the object of their mission.

These expressions both from the home government and its agents, we must believe, made an unfavorable impression at the outset, though in view of the past history and present attitude of Massachusetts utterances in that style were most natural. When taken in connection with the known attitude of at least all the commissioners except Nicolls toward the colony, and with what was partly known and partly surmised about the real object of their coming, they strengthened the resolution of the Massachusetts leaders to stand by their charter. They would not allow the rights which they had enjoyed under it to be diminished in any essential particular. This augured ill for the hopes of the king, through the commission, to secure the right of appointing a governor, or of controlling the militia, or of hearing appeals from the colony.

During the first week of the negotiation the commissioners delivered to the magistrates all their instructions of a public nature which concerned Massachusetts. In the meantime the election was held and Bellingham was chosen governor. He was less violent in his temper than Endicott had been, and in times past had occasionally opposed the dominant clique of magistrates and elders. But on questions like those which were now at issue Bellingham was in no way inclined to yield. To the instructions which merely called for information a ready assent was given. It was stated that a map showing the bounds of the colony was in preparation; that the records showing what the relations of Massachusetts and of the United Colonies had been with the Indians would be submitted; an account of the schools and especially of the college at Cambridge was furnished; statistics concerning government, industry, and population were prepared; such explanation of the Whalley and Goffe episode as was

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possible was given; while they were not conscious of having "greatly violated" the navigation act and they were sure they had no law against it. The Massachusetts book of laws was submitted, and various changes in it were suggested by the commissioners.

The task of explaining or justifying their treatment of the king's letter of 1662 the magistrates found more difficult. Of its commands the only one which had been promptly obeyed was that to administer justice in the king's name. On the arrival of the royal commissioners in 1664 the law relating to the admission of freemen had been so changed as to technically, though not really, comply with the king's command. Of the remaining orders, those to administer the oath of allegiance and to permit the use of the Book of Common Prayer had not been carried into effect. As to the oath of allegiance, it was now said that many who were in office had taken it before they left England, while it had been administered to Matthew Cradock, the first governor of the company. Their oaths of fidelity and of office were also cited as the equivalent of the oath of allegiance, though they were worded quite differently, and both contained the clause, "considering how I stand obliged to the king's majesty, his heirs and successors by our charter and the government established thereby." This clearly withdrew from his obligation to the king the entire content of the subject's obligation to Massachusetts, and in view of this fact Nicolls told the court that he did not see how it could be acceptable to his Majesty. As to the position of Anglicans in the colony the commissioners expressed themselves as wholly dissatisfied, while they could not understand the wording of the new law respecting the admission of freemen.[1]

But the discussions between the commissioners and the magistrates came to a crisis when the former announced their purpose to hear appeals and to sit as a court of justice for that purpose in the colony. As we have seen, they were authorized by their commission to do this, though the mild tone of their instructions had seemed to preclude such

[1] Mass. Recs. IV². 192, 200, 201; Danforth Papers, 72–80; Kaye, *op. cit.* 110.

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action. The right had been exercised by them in Rhode Island, and in two cases they proposed to try their power in Massachusetts. One of these arose from a complaint of Thomas Deane concerning the failure of the Massachusetts government to aid him and others in the prosecution of the ship *Charles*, from the French island of Oleron, which had in 1661 entered the port of Boston in violation of the navigation act. The magistrates, on the other hand, claimed to have done full justice by Deane and other parties involved.[1] The other case concerned one John Porter, said to have been a worthless fellow who, having been imprisoned on the charge of wilful disobedience to parents, had either been banished or had broken jail. The commissioners had met him in Warwick, Rhode Island, and, on hearing his complaint, had granted him the king's protection and ordered him to appear at Boston for a hearing before them.[2]

When it was announced that these cases were to be heard, the one concerning Porter being peculiarly irritating to the Massachusetts authorities, the general court protested against the action as an infringement of their patent. The commissioners in reply desired a conference with a committee of the court. A committee of eight was appointed to meet them. At the conference which followed, in reply to the claim of the commissioners that their instruction to hear appeals was not an infringement of the grant, but was implied in the very nature of the colony and its patent, the committee of the court pleaded that full and absolute authority to govern the colony had been given by the charter. They also argued that submission to appeals, especially in criminal cases, would prove an insufferable burden to individuals and make endless trouble for the government. The effect of remoteness, as compared with corporations located in England, Scotland, or Ireland, was emphasized.[3] When the commissioners stated that they would try cases without

[1] Danforth Papers, 71, 88; Mass. Recs. IV[2]. 194, 214.

[2] Mass. Recs. IV[2]. 137, 174, 216; Cartwright, *op. cit.* 93 *et seq.* adds interesting details tending to show personal animus on the part of the accusers of Porter, and a desire on the part of the commissioners to see justice done.

[3] Mass. Recs. IV[2]. 196, 232.

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a jury and according to the law of England, the committee sought to apply in an exclusive sense to Massachusetts the principle that subjects should be tried by the law of the land. They also regarded it as intolerable to submit to a tribunal whose law was its own discretion. With this notable utterance on the subject of appeals the conference ended.[1]

The commissioners next asked the court to name a place where they might sit and hear complaints. The court declared itself ready, if the commissioners would name specific cases, to submit copies of their proceedings therein; but beyond that it would not go. The commissioners closed the discussion with a warm protest against the attitude of suspicion and disobedience assumed by the court, and with the announcement that the next morning they would sit at the house of Captain Thomas Breedon and hear the case of Deane. The court then stated that it did not consent to or approve of the proceedings of the commissioners, nor did it consist with their allegiance so to do.

The next morning, an hour before the commissioners were to meet, a herald was sent to Breedon's house, and afterwards through the town, proclaiming the fact with sound of trumpet that the court was forbidden. This action was decisive; the hearing did not occur. The commissioners then abruptly closed negotiations, declaring that, "since you will needs misconstrue all these letters and endeavors, and that you will make use of that authority he [the king] hath given you to oppose that sovereignty which he hath over you, we shall not lose more of our labors upon you, but refer it to his Majesty's wisdom, who is of power enough to make himself to be obeyed in all his dominions, and do assure you that we shall not represent your denying of his commission in any other words than you yourselves have expressed it in your several papers under your secretary's hand." In another communication they used this suggestive language, "The king did not grant away his Sover-

[1] Cartwright states, *op. cit.* 97, that when the facts had been proved, as in the case of Deane, the commissioners would proceed without a jury; in the case of Porter they would have "considered" the law of the colony.

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aigntie over you when he made you a Corporation. When His Majestie gave you power to make wholesome laws and to administer Justice by them, he parted not with his right of judging whether those laws were wholesome, or whether justice was administered accordingly or no. When His Majesty gave you authority over such of his subjects as lived within the limits of your jurisdiction, he made them not your subjects nor you their supream authority."[1] The issue between Massachusetts and the crown was essentially one of sovereignty, and it was never more clearly stated than in these sentences. The court submitted later a detailed and vigorous defence of its position in all its bearings, and upon the matter of appeals and the ecclesiastical system it stood firm to the last. The case of Deane was also reopened by the colony and the commissioners were invited to the hearing. They, of course, refused to attend. Nicolls now returned to New York, and the other commissioners went to the Piscataqua to undertake the settlement of controversies in that region. By so doing, as well as by their express utterances, they confessed that the attempt to bring Massachusetts into submission through a royal commission had failed. Nearly a month had been spent in the effort and nothing decisive had been accomplished. The charter stood in the way, and, as events still further ripened, it became evident that that obstacle must be removed before the plans of the home government could attain success.

When the commissioners were about leaving England for the colonies, a royal letter was written commanding Massachusetts to surrender the Province of Maine to Ferdinando Gorges. Another letter was written to the inhabitants of Maine, commanding them to submit to Gorges. Nicolls was also appointed by Mason as his attorney, a suggestion of the fact that all those who were assailing Massachusetts stood near to the Duke of York and that his enterprise on the Hudson was more closely connected with the attack on New England and on the charters than has generally been supposed. But the war with the Dutch was just beginning and the fear that De Ruyter might make a descent on New

[1] Mass. Recs. IV[2]. 210; N. Y. Col. Docs. III. 99.

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York forced the immediate return of Nicolls to his own province, and prevented active participation on his part in the doings of the commissioners among the eastern settlements. But the region beyond Sagadahoc, later to be organized as the county of Cornwall, had been granted to the Duke of York, and any settlement which might favor the king's interests on the Piscataqua and in Maine could hardly fail to affect the remote outposts also.[1]

John Archdale — probably the same man who later became a proprietor and governor of South Carolina — came over with the commissioners in 1664 as agent[2] for Gorges. His influence was later felt in Martha's Vineyard, as well as in the region farther north. By him the royal letters in favor of Gorges which have just been referred to were delivered, the one to the magistrates of Massachusetts, and the other to Henry Josselyn and Edward Rushworth, who were acting on behalf of Gorges in Maine. These men, with Archdale, obtained from some of the inhabitants of the region an acknowledgment of their submission to the claims of Gorges. They also wrote to the magistrates of Massachusetts, demanding the withdrawal of its authority. On November 30, 1664, while the royal commissioners were occupied with the reduction of New Netherland, the magistrates at Boston replied to this letter, claiming Maine as within the bounds of their patent and insisting that agents of Gorges should not attempt to exercise powers of government there. The king, they said, had promised that they should be heard in England, and until a decision had been reached there no other authority than their own should be recognized. The general court, at its session in May, 1665, issued a proclamation declaring the government of Massachusetts still in force in Yorkshire ; courts were to be held as usual and all officers were commanded to perform their duties.[3] The map which was prepared for the commissioners included, as within Massachusetts, all the territory as far north as Casco bay ;

[1] N. Y. Col. Docs. III. 101.

[2] Colonial Papers, 1661–1668, 258, 272, 492 ; *ibid.* 1669–1674, 54, 329, 330 ; Hutchinson Papers, II. 110 ; Williamson, Hist. of Maine, I. 414 ; Kaye, *op. cit.* 115.

[3] Mass. Recs. IV². 243–248.

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while a detailed statement of this claim, supported by documents, was prepared.[1]

Meantime, however, an assembly of Gorges' supporters was held at Wells and some orders for the government of the region were issued. Archdale was made colonel of the militia, and "several private trainings" were held. Such was the situation when, in June, 1665, Carr, Cartwright, and Maverick appeared among the eastern settlements. They assumed that Massachusetts could not rightfully claim authority north of the bound house, "3 large miles north from the Merrimac River."[2] They therefore attempted to organize government there in the king's name. With the assistance of one Abraham Corbett and a few other discontented persons, chiefly at Portsmouth, they sought to make it appear that there was a general demand for a change. We hear suggestions of a resort to intimidation, while it is quite probable that Carr and Cartwright used threats and made imposing claims.

At Portsmouth, relying on a letter from the king that the forts should be strengthened as a defence against the Dutch, an assembly was called by the royal commissioners. But an appeal of John Cutt and others, of the board of selectmen, to the governor and council at Boston, drew from them an order forbidding the inhabitants to obey any of the commands of the commissioners. The meeting, however, was held, and a number of names were signed to a petition asking the king to set them free from the government of Massachusetts. The inhabitants of Portsmouth and Dover, who were loyal to Massachusetts, transmitted to the general court a signed statement of the fact. Finally, the appearance of Danforth, Lasher and Leverett, as commissioners from Massachusetts, proved decisive. Corbett was arrested and taken to Boston as a prisoner. The royal commissioners were unable to secure a following which possessed strength at all sufficient to overcome the influence of Massachusetts and its reputation for efficient government.

In Maine the way had been better prepared for them, and

[1] Mass. Recs. IV². 236–243.

[2] N. Y. Col. Docs. III. 99, 101; Mass. Recs. IV². 265–273.

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more men of standing could be counted among their supporters. Those settlements they formally received into the king's protection, and some of their leading inhabitants were empowered to act as justices of the peace. From Maine they passed for a brief visit to the Duke of York's grant east of the Kennebec, which they erected as a county and named Cornwall. Thence the three commissioners[1] returned to Massachusetts. A report to the king was then prepared, which related their doings in all the colonies they had visited, and drew sharply the contrast between the opposition shown in Massachusetts and the spirit of submission which seemed to exist elsewhere. It was a frank confession of the failure of the commission to bring about any change in the attitude of Massachusetts toward the crown. Cartwright sailed with the report for England, but on the voyage was captured by a Dutch cruiser; some of the papers of the commission were lost, but after long delay the report reached England.

Before the commissioners finally separated, the general court of Massachusetts had sent another address to the king,[2] complaining of the partisan spirit which had been shown by all the members of the board except Nicolls, of their attempts to undermine the government of the colony and to arouse enemies against it within and without. The court begged that the unfavorable representations which it was probable the commissioners would make on their return to England might not be received as the truth.

The commissioners, on their part, enlarged upon the futility of more correspondence and expressly referred to be the revocation of the charter of Massachusetts as likely to the only effective remedy.[3] Maverick wrote[4] to Clarendon, suggesting, as means to bring Massachusetts to terms, that only persons specially licensed should be permitted to trade with New England, and that this measure should be enforced

[1] Mass. Recs. IV[2]. 249–255, 265–273; N. Y. Col. Docs. III. 101, 106–115; N. H. Provincial Papers, I. 270–296; Colls. N. Y. Hist. Soc. Fund Series, 1869, 71, 138. The report, in completed form, is in Colonial Papers, 1661–1668, 341.

[2] Mass. Col. Recs. IV[2]. 274. [3] N. H. Prov. Papers, I. 254.

[4] Colls. N. Y. Hist. Soc. Fund Series, 1869, 70.

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by two vessels stationed off the coast. Boston merchants who proved refractory might be punished by seizing their estates in England, and a few of the most disloyal inhabitants might be sent to England. He suggested Bellingham, Hathorne, Gookin, Waldron, and Oliver as fit persons to be dealt with in this manner. Nicolls in later communications to Arlington and Morrice at first expressed the hope that the transfer of trade by natural process from Boston to New York would induce a change of spirit. Later, he thought that an embargo on the trade of Massachusetts might be resorted to with good results, for he believed it would soon induce the well affected to give up the ringleaders.[1]

In April, 1666, the king issued a circular letter to the colonies of New England, in which satisfaction was expressed with the attitude of all except Massachusetts. In that colony, he declared, the opinion seemed to be that the commission was a violation of its charter, that the king had no jurisdiction over them, and that there was no right of appeal. The king therefore had recalled his commissioners, and ordered that the general court should send to England four or five agents, of whom Bellingham and Hathorne should be two, that a full inquiry into the points at issue might be had. In the meantime affairs in the Province of Maine should remain as the commissioners had left them. A letter was at the same time sent to Rhode Island[2] contrasting its dutiful conduct with the deportment of Massachusetts.

When this command was received, a division began to appear among the people and was reflected in the general court of Massachusetts. A petition[3] signed by more than one hundred inhabitants of Boston, Salem, Newbury, and Ipswich, was presented to the general court, urging a reasonable acknowledgment of the sovereign rights of the king and submission to his will. "The receiving of a charter from his Majesty's royal predecessor for the planting of this colony," said the petitioners, "with a confirmation of the

[1] N. Y. Col. Docs. III. 114; Colonial Papers, 1661–1668, 310, 415.

[2] Colonial Papers, 1661–1668, 372, 373.

[3] The Danforth Papers, 99, 103; Colonial Papers, 1661–1668, 421; Colls. N. Y. Hist. Soc. Fund Series, 1869, 127, 132.

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same from his royal person, . . . sufficiently declares this place to be a part of his dominions, and ourselves his subjects." They asked that nothing further be done which should tend to provoke the resentment of the king. Among the magistrates also a debate occurred in which Bradstreet urged that agents be sent to England, for though the king might not be able to reach the colony by legal process, his prerogative gave him power to command their appearance. Willoughby, the deputy governor, met this with the argument that they must obey God rather than man. On the one side it was urged that the relations between Massachusetts and the crown were not in essence different from those between the crown and Calais. On the other side it was said to be "too hard to put us in the same condition with Calais." Thus the representatives of the trade centres in the colony and of those whose ardor for the Puritan ecclesiastical system had cooled, or had never been strong, sought to make their interests felt and to bring Massachusetts more fully into harmony with the conditions of the growing colonial system. The colony had never wholly lacked testimonies of this character, but they were henceforth to increase in volume and importance. Maverick had rightly perceived that the wise course for the home government would be to encourage this division of sentiment.

The general court vented the irritation which the petition had caused by ordering its foremost signers to appear, but no record of further action has been preserved. In a letter to Secretary Morrice the general court declined to send the agents whom the king had ordered and committed their cause to God and the clemency of their prince.

France had now allied itself with the Dutch in their war with the English, and in an earlier letter from the king Massachusetts had been authorized to confer with Sir Thomas Temple, the proprietor of Nova Scotia, about a joint attack on Canada. Temple visited Boston for the purpose of promoting this plan. But Massachusetts replied that it[1] was not possible for her to undertake so distant an enterprise

[1] Mass. Col. Recs. IV². 328; Danforth Papers, 108; Col. Papers, 1661–1668, 422.

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and one of such doubtful issue. The only step which was taken to conciliate the English government was the sending of a present of masts to the king. But the war, resulting as it did in the downfall of the Clarendon ministry, diverted attention from New England affairs, and gave Massachusetts a respite for ten years. The heirs of Gorges and Mason took no further steps to establish their rights among the eastern settlements. Massachusetts, through her commissioners, fully restored her control in 1668, and maintained it without further opposition till the question was again opened in England.

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CHAPTER VII

THE ACTS OF TRADE

THROUGHOUT the entire period of history within which occurred the settlement of the American colonies mercantilism was the dominant theory of trade and industrial organization in Europe. According to this theory the nation or empire which had attained a tolerable degree of political unity became, by virtue of that very fact, an economic unit. In war and diplomacy the nation figured before the world as in a sense a personality, with a distinct and, on the whole, a self-consistent policy. The same thing was considered to hold true in the economic sphere. Trade, therefore, was not free. The merchant or the subject, as well when considered as a producer or consumer, was not regarded as simply an individual, with relations which were quite as likely to be cosmopolitan as national. He was primarily and essentially an Englishman or a Frenchman, and was bound by law and custom to seek through his transactions the advantage of his country and its prince. This involved an application on a national scale of the policy which had prevailed in the mediæval cities and their leagues. In the case of England, because of the early date at which national unity was there attained, it appeared from the first as the policy of the country as a whole. As England began to expand and the empire to take form, the dependencies came within the reach of the same policy.

In the opinion of the mercantilist, trade and industry should be so organized as to secure the maximum of national strength. It was the duty of statesmen to so regulate them as to attain this end, and in doing this a reasoned policy should be followed. Results were most conveniently measured by increase of revenue to the prince or the nation. There was no limit to the possibility of regulation, provided it could reasonably be supposed that it would attain the end

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that was sought. The well-known policy which was applied by statesmen of this period to the circulation of the precious metals, to exports and imports in general, and which was summed up in the doctrine of the balance of trade, was a deduction from this general principle. The organization of trade and its regulation from one centre, whether it were carried on by means of incorporated companies or by individuals subject to general laws, was determined by this motive and had the national well-being as its conscious object. It was natural that in the application of this policy England should not proceed with the logical rigor which characterized French methods in the time of Colbert; but a reasonable degree of consistency was maintained even by the English.

As has been already suggested, it was the development of national strength, the increase of wealth and of prestige throughout the world, which gave to colonization its chief interest in the eyes of English statesmen. This was distinctively the imperialistic motive. It involved an application of the mercantilist policy on the broader stage of transoceanic commerce and to relations between England and her dependencies across sea. In this sphere primary, though not exclusive, reference was had to the interests of the island kingdom. That was the central planet, and the colonies were its satellites. The European constellation, and not the American, was the centre of the system. In this connection the strengthening of the navy and of the merchant marine presented itself very clearly as one object to be sought. The merchant ships and vessels of the navy must not only be used for the defence of the dependencies, but they furnished the only means of even approximately bridging the Atlantic. By carrying colonists, officials, commodities, and communications of all kinds across the ocean they formed a most important element in the system of "supplies" which, with the extension of colonization, broadened out into the entire mechanism of communication between Great Britain and its colonies. Many of the plantations, as they were settled, became the source of large supplies of tropical, or semitropical, products which were of the greatest value for British consumption or trade. The effort to secure for England the greatest ad-

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vantage from this fact suggested a second feature of commercial policy relating to the colonies. Still another aspect of the general problem was presented by the import trade of the colonies and their demand for British products as compared with their demand for European goods in general. Clearly connected with this was the advantage or disadvantage which might arise from direct trade between British colonies and the colonies of other nations, whether those situated on the American continent or on adjacent islands or elsewhere. Finally, as the colonies grew in population and wealth, the possibility arose of their developing manufactures, and this necessitated the consideration of the relation which these would bear to the manufactures of Great Britain.

Such were the elements in the problem of commercial relations within the growing British empire. The empire, however, was by no means a political unit, for its various parts, separated as they were by thousands of miles of ocean, had each its distinct tendencies and interests. But the application within this vast complex of the traditional views of the merchants, statesmen, and theorists of the day concerning what might be the interests of England when considered as the sovereign power, gave rise to British commercial policy as applied within the empire. The devices which were used were not new or invented for this special purpose. They had been used of old in England and were in general vogue among the nations of the time. All that was necessary was to apply them in somewhat new and broadened relations. One device was to insist by statute that all or certain imports should be carried exclusively on ships owned and manned by Englishmen. The effect intended by this was to encourage shipbuilding at home and to secure the domestic carrying trade for Englishmen. It gave rise to what was known as the navigation law proper, and it was an extension and adaptation of a policy which had been resorted to at intervals since the time of Richard II.

Another device — that of the staple — was much older and had been much more widely practised. It had been customary to designate certain towns as places where commodities of a special class should be brought for purchase and

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sale. By a measure of this kind merchants were brought together, trade could more easily be supervised, and customs duties better levied and collected. Staple rights were enforced in all the important market towns on the continent of Europe. Various Flemish towns, and later Calais, bore a prominent relation of this kind to the wool trade of England. By an ordinance of 1353 a number of towns in England were designated as staples for the wool trade. One of the most important features of the commercial policy of England, as it affected the colonies, arose from the effort to apply the principle of the staple to their trade. In this case England itself was to be the staple, and the purpose was to force all colonial imports and many of their exports to pass through its harbors. The feature of it which related to the colonial export trade came to be known as the policy of the enumerated commodities. The germ of this appeared in the controversy between the government and the Virginia company, the former insisting that the entire colonial product of tobacco should be brought to England. No attempt was made to impose the corresponding restriction on the import trade of the colonies until after 1660. At no time during the seventeenth century were there colonial manufactures which demanded attention, while the granting of bounties on colonial products was not begun until the eighteenth century. The system of subsidies and imposts, or British export and import duties, applied of course to colonial trade, as it did to that of the realm, throughout the period. At least as early as 1660, and perhaps earlier,[1] drawbacks were granted on colonial products which were reëxported from England. The monopoly of the English market for enumerated commodities it was always the interest of the home government to secure for the colonies. The cost of imperial defence also rested on Great Britain. Thus, though the fiscal motive

[1] See Declared Account, Privy Seal, March, 1631 (Mss. Public Record Office), where mention is made of a drawback in full of both the subsidy and impost on tobacco, if it were exported within a year after the duty was collected. Cal. S. P. Dom. 1633–1634, 534, indicates that a drawback on tobacco reshipped from England was then being allowed.

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was prominent in British commercial policy throughout, as time passed compensating elements appeared in the measures which were applied to the colonies; and these went far to relieve the monopolistic features which were certainly a chief characteristic of the system.

The dissolution of the Virginia company made no essential change in the attitude of the English government toward the tobacco industry. It repeatedly insisted that colonial tobacco should be sent exclusively to England. In the important proclamation of September, 1624, which was issued at the special request of parliament, the colonists were required in the clearest terms to bring their entire product in English or colonial ships, and that, in order to distinguish it from foreign tobacco which might be smuggled, it should be landed, inspected, and marked at the London custom house.[1] Though this proclamation lapsed with the death of James I, its principles were adhered to, and in later orders express reference was made to its contents as embodying valued ideas and precedents.[2] Virginia authorities usually expressed acquiescence in the policy, though free trade with the Dutch was attractive and was always indulged in to an extent by planters and merchants.[3] Royal commissioners who were appointed in England labored for the same end. Such a body, at the head of which was Sir John Wolstenholme, made a strong report on the subject to the king in 1633, urging that the principle

[1] Rymer, XVII. 621. See also Colonial Papers, July 2, 1624, and succeeding entry, for the suggestions which may have led to the issue of this proclamation. The proclamation itself does not appear in the Calendar, but is referred to under December 13, 1624, and February 17, 1626. See Va. Mag. of Hist. VII. 43, 44, 46.

[2] See Proclamation, March 2, 1625; Rymer, XVII. 668.

[3] Colonial Papers, 1574–1660, 34; Randolph Mss. Library of Va. Hist. Soc. fol. 203 *et seq.* A letter received from the privy council, in 1626, shows that the king was offended because they were sending tobacco to the Low Countries, to the diminution of his profit. The governor and council reply, April 5, 1627, admitting that one vessel, owned by adventurers of the late Virginia company, had sailed with tobacco to the Low Countries. But about that matter they plead lack of orders, and promise for the future that bonds shall be taken to deliver all tobacco in England. In another letter they state that the entire crop of 1627 was shipped to London.

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of the staple should be maintained and detailing the advantages which might be expected therefrom.[1] In general we may say that the government of Charles I maintained an attitude on this subject which was consistent with that which had been assumed in 1621.[2]

During most or all of the seventeenth century the government continued its efforts to suppress the production of tobacco in the realm and Ireland. Its production there was never large, but it was sufficient to arouse complaints from time to time on the part of colonists and merchants. To these the government faithfully responded, but at no time apparently with complete success.[3]

Nor in its attitude toward Spanish tobacco can the government be fairly accused of disregard for colonial interests. We learn in 1625 that it was being smuggled into England, and Charles I appointed a commission, a part of whose duty it should be to discover such offenders.[4] But the smuggling apparently continued, and in January, 1627,[5] another commission was created. It was authorized to buy and import Spanish, or other foreign, tobacco not in excess of 50,000 pounds. This small concession may have been made in response to a natural demand and as the readiest means to check smuggling. From 1631 to 1635 highly discriminating duties were levied upon the Spanish product, and after the latter date a policy of prohibition was followed. It is

[1] Colonial Papers, 1574–1660, 171. The report is printed, at least in part, by Cunningham, Growth of English Industry and Commerce, Modern Times, 343 n.

[2] Va. Mag. of Hist. VIII. 147, 153–154; Cal. S. P. Dom., April 17, 1634. The lords of the admiralty write that it had been the custom of the vessels from Virginia and other colonies to change captains at the Isle of Wight, thereby nominally conforming to the bond which they had given in the plantations to land at some place in the realm. Then by new contracts they would take their ships, so laden, to foreign ports. *Ibid.* October 23, 1637. The same complaint was then repeated by several farmers of the impost.

[3] Cal. S. P. Dom., August 9, 1627; January 6, 1631; March, 1634; April 21, 1636, and June 19, 1636; Rymer, XIX. 235, 474, 522, 553. An act forbidding its cultivation was passed in 1652, and a number of acts against it subsequent to the Restoration.

[4] Colonial Papers, 1574–1660, 63, 64, 71, 72, 83; Proclamation of March 2, 1625, Rymer, XVII. 668. Another proclamation, dated April 9, is referred to, Va. Mag. of Hist. VII. 134.

[5] Rymer, XVIII. 831.

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estimated that during the period in general not more than one-tenth of the total amount of tobacco imported into England was of Spanish origin.

Of course the only effective answer which the colonial producers could make to the importers and consumers of Spanish tobacco was, if possible, to make their product equal in quality to that of their rivals. If they were able to do this, they would check the decline in price, which even before 1630 became one of the most serious questions with which the planters had to deal. But the quantity of the product, as well as its quality, affected its price, and because of the demand in the European markets and of the immediate return which was expected, the colonists committed themselves to its production on a larger and larger scale. Crude methods and conditions which accompanied this expansion of the industry stood, however, in the way of the improvement of the product, while the rapid increase in its quantity sent the price down and kept it down. Protests and warnings were uttered by English officials, and at intervals these were embodied in royal instructions, the objects of which were to limit the production of tobacco and to improve its quality. The provinces themselves — Virginia in the lead — coöperated in these efforts by laws and administrative regulations. These took the form of the stint, also of inspection, still again of positive measures to encourage the production of other staple commodities, and thus to diversify the industry of the province. And these measures did not cease with the Interregnum or the Restoration, but were perpetuated through the century.

In 1629 the colonists were prohibited from raising more than 3000 plants for each tithable worker, unless the family consisted wholly of women and children. In 1630 the terms of this regulation were changed to 2000 plants for each member of a family, including women and children. In 1632 it was enacted that only 2000 plants per poll should be raised, and a crude attempt to enforce the restriction was made. Tobacco, when ready for the market, if not found merchantable, was to be destroyed. These regulations were confirmed and extended at the first revision of the laws, in 1632.[1]

[1] Hening, Statutes of Virginia, I. 142, 152, 164, 188.

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In 1633 the assembly established a system of inspection. It was provided that warehouses should be built at different points within the province, to which all tobacco, made up into rolls, must be brought before the last day of December of each year. The planters must swear that they had kept back none except what was allowed for their private use. At the warehouses the tobacco must be inspected by sworn officers, one of whom must be the councillor who lived in the neighborhood. The poor tobacco was ordered to be burned and the good to be received into the stores on the planter's account. At the same time the number of plants to be raised was reduced to 1500 per poll, and provisions for inspecting the crop in the field were made more severe. Ships were ordered not to break bulk until they reached Jamestown, in order that there, as at a staple port, all exchanges of European commodities for tobacco might be made. But the product continued to increase so much more rapidly than did the market for it, that in 1639 the assembly ordered for the ensuing year that not only the bad but half the good tobacco should be destroyed.[1] But under the most stringent regulations which could be enforced the Virginia product which was annually brought to market considerably exceeded 1,000,000 pounds.[2] For this reason Virginia planters were always dissatisfied with such contracts as Englishmen could offer for its sale, while access to other markets seemed an absolute necessity. Even at best under these conditions, though the quality slowly improved, the price of tobacco tended steadily downward.

While the cultivation of tobacco was being regulated for the purpose of limiting its production, laws were passed to promote the raising of corn and wheat. By a large number of enactments, beginning with 1623, the production of these commodities was made compulsory. The usual requirement was that for every worker on a plantation two acres of land

[1] *Ibid.* 204, 210, 214, 225.

[2] The returns of the farmers of the impost for 1638–1639, omitting the West Indies from consideration, would indicate an importation of about 1,320,000 pounds.

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should be planted with corn. In 1630, and repeatedly thereafter, it was enacted that any who were found delinquent in this matter should forfeit all their tobacco. In 1642 it was ordered that the constables should inspect the cornfields, and should compel the planters to pay the fines to which, for delinquency, they were liable by law. Many other regulations were issued during the century for the encouragement of these staple products. Efforts were also made to establish the production of the vine and mulberry, iron, salt, and other commodities. But the province continued devoted to the cultivation of its peculiar staple, and all other forms of agriculture, so far especially as they affected exports, remained subsidiary.

The government monopoly was the special form of administrative control which was applied to the tobacco industry after, as well as before, the dissolution of the Virginia company. In the fall of 1624 Edward Ditchfield and others, citizens of London, were appointed officers for searching and sealing tobacco, with a view to preventing the importation of the foreign product. But we are also told that the king contracted with them to act as his agents in receiving the tobacco from Virginia and the Somers islands at such prices as he had agreed to give for it. In addition they were to pay the crown such sums as would reasonably compensate it for losses in the customs and enable it to provide for the defence of the colonies. "It is agreed on all sides," wrote the king, "that the tobacco of Virginia and the Somers islands (the only present means for their subsistence) cannot be managed for the good of the plantations unless it be brought into one hand, whereas [whereby ?] foreign tobacco may be carefully kept out & the Tobacco of those plantations may yield a certain and ready price to the owners." But the contract proved exceedingly offensive to the colonists, the governor and council calling it "pernicious" and declaring[1] that under its operation supplies had been so scanty and conditions so desperate that many had resolved

[1] Colonial Papers, 1574–1660, 63, 69, 71, 74, 75–76, 84; Proclamation of March 2, 1625, in Rymer, XVII. 668 *et seq.*; Va. Mag. of Hist. VII. 134, 135. Ditchfield had been a member of the Virginia company.

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to return to England in order to petition for redress. But instead, as we have seen, Sir George Yeardley was sent over as agent. He procured additional supplies, presumably at lower prices, and a promise of free importation, so that in April, 1626, a letter of grateful acknowledgment was sent to the king. But the commission which was created in January, 1627, with Sir John Wolstenholme at its head, was authorized to buy and contract for the entire product of the English colonies, and one Amys was prominently concerned in this business. We learn that, early in April, the planters and adventurers of Virginia and the Somers islands were called together at Sir John's house, and there, by order of the privy council, were told what quantity of tobacco they should import and the price the king would pay for it. But they with one voice rejected both proposals, the quantity and price they said not being sufficient to maintain the people in the colonies; and they asked that the king would allow them to retain possession of their tobacco and dispose of it as they liked. The people of Virginia had also learned of the project, and through Yeardley and the council protested against all contracts. The news, it was said, had "deadened their spirits and plunged them into misery." They besought the privy council "not to let them fall into the hands of avaricious and cruel men, whose exorbitant and wide consciences project and digest the ruin of this plantation for profit and gain to themselves." But, on August 9, a royal proclamation was issued[1] prohibiting the importation of tobacco from the English colonies without a license under the great seal and commanding that, when imported, it should be sold to the commissioners appointed for that purpose, from whom alone tobacco might be bought. Not later than the beginning of 1628, however, this contract was dissolved, much to the gratification of the colonists.[2] Early in 1628 we find Governor West and his council asking that 500,000 pounds be taken annually, and that "any overplus they may export after paying custom."

[1] Rymer, XVIII. 831; Colonial Papers, 1574–1660, 83–84, 86; Cal. S. P. Dom., August 9, 1627; Bruce, Economic Hist. of Va. I. 278, 284.

[2] Colonial Papers, 1574–1660, 89, 90; Va. Mag. of Hist. VII. 261.

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Although, in 1631, a new board of Virginia commissioners was appointed, no contract was formed with them. But the colonists continued to complain of alleged extortion on the part of individual merchants, and so much tobacco was directly exported to foreign ports, that in 1634 the king resolved again to take the sole preëmption of it at fair prices, and appointed another commission to take charge of the business.[1] One John Stoner was sent as an agent to negotiate with the colonists. His death on the outward voyage, together with the uprising against Governor Harvey which occurred soon after, seems to have interrupted this experiment. No further important steps were taken until 1637 and 1638, when the Virginia assembly, acting on a suggestion from the king, made provision for an officer to keep a register of tobacco and of all other[2] commodities exported, and a contract was again proposed.

George Lord Goring, who was one of the farmers of the customs in England, now offered to take 1,600,000 pounds of tobacco at 6*d.* per pound in Virginia or 8*d.* in England. As the price had recently been only 2*d.* per pound, the governor and council thought that this was an advantageous offer, and urged the burgesses to accept it. Long debates ensued, the assembly, it is said, devoting more than a month to the consideration of the subject. Attention was called to the poverty and other ills which resulted from excessive planting of tobacco and to the declining prices of European goods when estimated in its terms. The contract, it was urged, gave an opportunity for limiting the product, raising its price, and improving its quality. But no effect could be produced. The burgesses saw ruin staring them in the face, if any stint were imposed upon them which was not shared by all the tobacco-producing colonies, in the West Indies as well as elsewhere. Voicing the sentiments of the colonists at large, they declared that it was impossible to fix in advance the amount of the product. This could be done only by stopping the influx of immigrants. But they were arriving steadily and rapidly, and were taking up new land and

[1] Rymer, XIX. 560; Va. Mag. of Hist. VIII., 159, 300, 302.

[2] *Ibid.* IX. 175; Colonial Papers, 1574–1660, 239.

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entering upon the culture of the staple. This process could not be checked, and in their opinion it necessitated freedom in the planting of tobacco and free trade with England. They were evidently content with the rude comforts which they enjoyed, and considered it safer to endure the privations which accompanied them than to change the course of settlement to which they had become accustomed. They were therefore opposed to monopoly and restrictions.

This utterance of the burgesses proved decisive. [1] Jerome Hawley wrote that he did not think a contract would ever be agreed to, "if it depends upon the yielding of an assembly," and if it passed otherwise, without binding all other colonies, the ruin and depopulation of Virginia might be expected. At the same time the outbreak of civil troubles in England made it impossible for the government to further consider contracts or monopolies. The objects which the British government had sought, and toward which the officials in Virginia had to an extent contributed, were not fully attained. The production of tobacco had not been effectually limited, its quality had not been sufficiently improved, while the production of other staples languished. The Dutch had now settled on the Delaware and were therefore more accessible to the ports of Virginia and Maryland than before. This, together with other causes,[2] made the complete enforcement of the principle of the staple an impossibility, while we continue to hear complaints of the smuggling of Spanish tobacco into the realm and of the imperfect enforcement of the prohibition of raising the product in English gardens.

During the Civil War and until the establishment of the Protectorate no steps were taken to check trade between the Dutch and the American colonies. Being uninterrupted and mutually advantageous, it naturally increased. But the increase of the Dutch carrying trade gradually aroused

[1] Winder Papers, Va. State Library; Va. Mag. of Hist. IX. 409; X. 271.

[2] For one interesting statement of the advantages to the fair trader of the exportation of tobacco in casks rather than in bulk, see Colonial Papers, August 13, 1687. We may suppose that these conditions were operative at all times.

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the jealousy of the English merchants, and commercial rivalry in various quarters of the globe became acute. Many occasions of irritation and jealousy arose. The result was that, in 1650, the Rump Parliament introduced into the act already referred to, for the reduction of Virginia and the rebellious Island colonies, a clause forbidding ships of foreign nations to trade with any of the English colonies without a license from parliament or the council of state.[1] No declaration that England intended to monopolize trade with her colonies could well be stronger than this.

But the ordinance of 1650 was essentially a war measure. The following year, however, the much more famous navigation act of the Commonwealth was passed. Though in rigor this fell short of the earlier ordinance, yet it set forth in outline the main features of the old navigation policy, at the same time extending them and casting them in a form which in general they were to retain for more than a century and a half.[2] It provided that no goods of the growth or manufacture of the outlying continents of Asia, Africa, or America should be imported into England or its dominions except in ships of which the owner, the master, and the major part of the mariners were English; and likewise that no productions of Europe should be imported into England or the dominions except in English ships or in such foreign ships as belonged to the country where the goods were produced or manufactured. Goods of foreign origin must also be brought direct to England from the place of growth or production, or from the places whence alone they could be shipped or whence they were usually first shipped after transportation. The importation of fish by aliens was also prohibited.

This act, more directly than its predecessor of 1650, was aimed at the carrying trade of the Dutch, and it contributed toward the war between the two nations which began in 1652. But in neither act was provision made for additional officials or for other administrative mechanism to aid in its enforcement. There is proof, however, that the navy was used for the

[1] Scobell, Acts and Ordinances of the Long Parliament, 132; Beer, Cromwell's Commercial Policy, Pol. Sci. Quarterly, XVII.

[2] Scobell, 165.

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purpose among the Leeward islands and at Barbadoes.[1] In 1656[2] a Virginian merchant or planter sought to explain the existing low price of tobacco by the fact that the Dutch were excluded from the trade. It was said that many had been ruined by it. But he also admitted that the trade was still secretly carried on through New Netherland, though this was done at a loss. As British armed vessels scarcely ever visited Virginia waters or the coast farther north during the period in question, it is fair to suppose that trade with the Dutch continued, though probably somewhat reduced in amount. The claim of the Virginians that, by the articles of surrender, they were entitled to freedom of trade with all nations, and the passage by them of acts early in 1660[3] forbidding masters of vessels to molest friendly aliens who were trading in the waters of the province, would indicate that the facts corresponded largely with their claims.

Such other fragmentary evidence as exists goes to confirm this view. In 1663, or thereabouts, John Bland, a London merchant who had invested heavily in the Virginia trade, wrote an able protest[4] against the policy of England as set forth in the first act of trade of Charles II. His argument was based throughout on the admission that after, as well as before, the act of 1651, trade with the Dutch in tobacco was carried on freely by the planters of both provinces on the Chesapeake. English traders, as well as Hollanders, shared in this traffic. He states, it is true, that tobacco was the only commodity which the Dutch carried away from those provinces, and that they selected only the quality which suited the market of Holland; but tobacco was the only commodity of importance which those provinces had to export. He implies that European goods were freely brought in on the return voyages, for he contrasts the prices at which Virginians had recently been able to command them with the higher rates which were being demanded now that the coterie

[1] Thurloe, State Papers, III. 142, 158, 249, 565, 754; Beer, *op. cit.* 47.

[2] Thurloe, V. 80.

[3] Hening, I. 383, 513, 535, 540.

[4] Va. Mag. of Hist. I. 142. In the Colonial Papers it is erroneously calendared under 1676.

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of English merchants, whom he charges with having brought about the passage of the new act of trade, were able to monopolize the traffic. A thoroughgoing free trade argument, used for the purpose of showing that under the régime of freedom the wealth and prosperity of all parties concerned would be most enhanced, Bland upheld by this suggestive statement: "I am sure upon the first obtaining the Act in the Long Parliament, our traders to Virginia and Mariland carried the Tobacco from those colonies to those of Holland themselves and neither paid duties in the country nor in England, and so they would do still if permitted; wherein it is apparent its their own interests that is sought after; for the custom, let the Hollanders trade thither or not, will be the same in England, and rather increase than decrease if they be permitted to trade thither; for, as the colonies increase they will grow to better husbandry, and so by the production of better commodities make our customs the greater." But Bland was speaking to deaf ears. The merchants and statesmen of the period were resolved that, if possible, tobacco should be prevented from reaching continental markets except on English vessels and through English ports.

The policy set forth in the acts of trade which were passed during the period of the Restoration was an expansion and systematizing of the principles which were already accepted. They were the fostering of the navy and the promotion of shipbuilding, combined with the establishment of such a monopoly over colonial trade as could be secured by making England the staple for the colonies. Parliament was also careful to call attention to the fact, that it was "the usage of other nations to keep their plantation trade to themselves."[1] To the advantages of the legislation, so far as it affected shipping, the colonists were fully admitted.

The navigation act proper, in this group of statutes,[2] provided that no commodities should be imported into or exported out of any of the dominions or plantations, except in such vessels as were truly owned or built by the people of

[1] The policy of the English government is well stated in the preamble to the act of 1663, 15 Car. II. c. 7.

[2] 12 Car. II. c. 18.

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the realm, Ireland, or the plantations, and of which the masters and three-fourths of the mariners were English; that no alien should be a merchant or factor in the said dominions; that no goods, the growth or production of Asia, Africa, or America, should be imported into the realm, into Ireland, or the islands of Jersey and Guernsey, except in vessels which were built, owned, and manned as above described; no goods of the growth or production of the aforementioned continents should be imported unless they came direct from the countries where they were produced or from the places whence they were usually shipped. In contrast with the ordinance of 1651, no special restriction was laid on trade with any of the states of the Continent of Europe except Russia and Turkey.[1] This act comprised all that was directly attempted by this famous group of statutes for the benefit of the shipping interest, but for its purposes the word "English" was so defined as to include the colonists and the Irish.[2]

For the benefit of the merchants, as distinguished from the ship-owners, the policy of the staple was applied on a large scale. It appears in the provision of the act of 1660 which relates to the commodities of the plantations which, because of their tropical or semi-tropical origin, could not be produced in England. Section 18 of the above act provided that no sugar, tobacco, cotton-wool, ginger, indigo, fustic or other dyeing wood, the growth or manufacture of any of the plantations, should be carried from thence to any place except the other plantations or the realm of England,[3] under penalty of forfeiture. These were currently designated as the enumerated commodities, and at a later time the list was considerably increased. With the exception of tobacco, all the commodities which were at first included in the list were products of the island colonies. During the seventeenth century and with the exception of tobacco, the continental

[1] See McGovney, in Am. Hist. Review, IX. 725.

[2] 13 and 14 Car. II. c. 11, sect. 6.

[3] By the act of 1660 Ireland was included with the realm in this provision. But by an act of 1670 (22 and 23 Car. II. c. 26, sect. 11) this was corrected, and the word "Ireland" was ordered to be omitted from all bonds for the shipment of enumerated commodities.

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colonies were not affected by the policy of the enumerated commodities. Subject to the customs and trade laws of European nations and their colonies, they could send their products whither they would, provided they did it in ships legally owned and manned.[1]

[1] The importance of the act of 1660 may justify special reference to what appears in the Journals of the Commons and Lords respecting its passage. Similar references could be given concerning the action that was taken on the later statutes. But it is all too brief, especially on matters which directly concern the colonies, to be specially informing. When the manuscripts of the two houses shall have been arranged and examined, petitions, reports, and other material may be found which will throw light on the discussion that preceded the passage of these acts. "Ordered, that it be referred to a committee to consider of encouraging and regulating the manufacture, both of new and old Wool, and navigations in English Bottoms; viz., unto Sir George Downing, Mr. Streete, Col. Birch, Sir Walter Earle, Mr. Knight, Sir Henage Finch, Sir Wm. Wheeler, Sir Tho. Clergis, Mr. Shaw, Mr. Middleton, Col. Jones, Sir Tho. Meeres, Mr. Jolliffe, Mr. Boscawen, Sir John Bowyer, Mr. Spry, Sir Tho. Bludworth, Sir John Robinson, Mr. Dennys, Mr. Delves, Sir Wm. Dayley, Sir Wm. Vincent, Sir Solomon Swale, Sir Edward Turner, Sir Tho. Rich, Sir John Frederick, Mr. Hall, Sir Wm. Morris, Mr. Allen, Mr. Yong, Mr. Chase, Mr. Henley, Sir John Lowther, Major Toihurst, Sir Geo. Savile, Sir Anthony Ashley Cooper, Mr. Culliford, Mr. Proby, Alderman Burnham, Mr. Deering, Mr. Ellison, Mr. Armstrong, Mr. Foly; all the Merchants, and all that serve for . . . Ports, have Voices. And are to meet To-morrow in the Afternoon, in the Exchequer Chamber, at Two of the Clock; and so *de die in diem;* with Power to send for Persones, Papers, and Witnesses, and what else may conduce to the Business: and the Petition for Colchester is referred to this Committee." July 27, 1660, C. J. VIII. 104. On August 2 "Mr. Thomas (and) Sir Anthony Irby" were added to the committee.

The Journals of course reveal nothing of the doings of this committee and very little respecting the discussion of the bill in the house, if, in fact, there was any. On September 4 (*ibid.* 151), when the bill was read the third time, the former clause relating to enumerated commodities and to the bonds required in connection therewith was introduced. This would indicate that this feature was not contemplated by those who initiated the measure. After a few other verbal amendments the bill was passed, and Sir George Downing took it to the Lords.

The Lords were requested to expedite the business and they did so. The bill was read on September 5. On the 7th a committee reported a few verbal amendments, but "in regard this Bill is of so great Concernment to the Kingdom, the House thought fitter to pass by these Alterations, rather than to stay the passing of it at this time; and to dispatch it as it came from the House of Commons." Therefore it was immediately passed without change. L. J. XI. 157, 158, 160. At the same time a joint petition of the houses on the efforts of the Dutch for some years past by manipulation of their tariffs

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Two years later, by the statute of 1663,[1] it was provided that no commodity or manufacture of Europe should be imported into any of the plantations, unless it had been reshipped in England, Wales, or Berwick on Tweed in ships legally built and manned; and such commodities must be carried directly to the plantations whither they were bound and not to any other place. Certain exceptions were made to its restrictive features. These were, that salt for the fisheries of Newfoundland and New England could be imported directly from ports in Europe; that wine could be imported directly from Madeira and the Azores; that provisions, servants, and horses could be imported from Scotland and Ireland.

In order to secure the execution of the statute of 1660, provision was made that ships sailing from the plantations should give bond, with one surety, to the officers of the customs of the port whence they sailed that, if they should load in the plantations any of the enumerated commodities, they would unload the same in the realm. The amount of the bond was £1000, if the ship was less than one hundred tons burden; £2000, if of greater burden. In the absence of royal customs officers in the colonies, the duty of executing the act was devolved on the governors. They were required not to allow any of the commodities to be loaded until a similar bond had been signed. Twice yearly the governors were required to return to the chief officers of the customs in London lists of the bonds which they had taken, and once yearly lists of the ships which had sailed from colonies with cargoes of enumerated commodities. These provisions were further elaborated in the statute of 1663, and a requirement was added to the effect that within twenty-four hours after his arrival in the colony, the importer should furnish the governor, or such officer as he might designate, a true invoice of his goods, with his own name, the name of the

to injure the English woollen trade, was sent to the king, and he promised, through Clarendon, to bear this in mind when the time should come for the negotiation of another treaty with the Dutch.

The summary manner in which this most important piece of legislation was passed reminds one forcibly of the passage of the stamp act in 1765.

[1] 15 Car. II. c. 7.

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master of the vessel, its name and proof that it was built and navigated according to law. The penalty for disobedience was forfeiture of vessel and cargo. The governors were also required to take an oath to obey and execute the acts, under penalty of removal and the forfeiture of £1000, one-half to go to the king and one-half to the informer. Customs officers in England were also forbidden under heavy penalties to allow any of the enumerated commodities to be shipped abroad without being loaded in some port of the realm. The statutes relating to the English customs also provided for the seizure of illegally imported or exported goods.

The passage of these acts, if they were to be enforced, necessitated increased attention to the registry of vessels as colonial or English built. The acts implied the immediate exclusion of all ships which were owned by foreigners from the colonial trade. Upon the governors also, in the chartered colonies as well as in the royal provinces, many additional duties must devolve. These were connected with the registry of vessels, the examination of invoices, the inspection and granting of bonds, and the taking of general precautions against illegal trade in all its possible forms. The activities of the governors as vice admirals were necessarily developed. They were naturally brought into closer relations with the crown through new oaths and instructions for the enforcement of the acts of trade. The customs regulations might necessitate the creation of new offices and tribunals in the colonies. In time of war — and the commercial policy which we are discussing was destined to occasion wars — restrictions must become more severe; under letters of marque armed attack on the merchant ships of the enemy would be authorized; and the system of convoys, which for continental traffic had been in vogue certainly since the beginning of the century, must be applied to colonial trade, and that would lead to the vessels going and coming in fleets. By steps such as these the passage of the acts of trade was destined to affect the administrative relations between England and the colonies, resulting in their development and making them more systematic.

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But these changes came very gradually and never fully corresponded to what the needs of the situation demanded. During the early years of the Restoration a few references appear to an inadequate supply of ships for the transport of colonial goods.[1] Owing to special causes, this was felt in New York after its conquest from the Dutch. Before that time and until the effects of the war of 1665–1667 began to be felt, the Dutch probably retained about their usual share in the trade of the continental colonies.[2] In 1667, as a result of a petition of Governor Stuyvesant, by order in council, special permission was given for the Dutch to carry on trade with New York and the Delaware region, but to employ in this traffic no more than three ships. This was in the nature of a dispensation setting aside the law in a special case, a practice which was not infrequently applied to the acts of trade as well as to other statutes. It was intended that the privilege should continue for seven years, but such an outcry was soon raised among the merchants that in November, 1668, it was withdrawn.[3] The conquest of New Netherland furnishes one of the strongest proofs that the English were committing themselves in earnest to the trade policy which was outlined in the recent acts; while, conversely, the act of conquest itself contributed more powerfully than any of the other measures of the government toward the exclusion of foreigners from the trade of the northern colonies.[4]

The acts and their enforcement also brought to the front the question of the relation of the Scotch to the trade of the colonies. Under the terms of the law they were wholly excluded. But in the summer of 1661 deputies from the Scotch parliament petitioned that the act of navigation might be extended to Scotland, as otherwise its trade and shipping would be ruined. The equality of the kingdoms since 1603 was also urged as an argument. The commis-

[1] Colonial Papers, 1661–1668, 236, 315, 337, 338.

[2] *Ibid.* 106, August 25, 1662, consideration by the council for foreign plantations of a secret trade with the Dutch for colonial tobacco. See also *ibid.*, December 7, 1663.

[3] N. Y. Col. Docs. III. 164–167, 175–177; Colonial Papers under corresponding dates.

[4] Colonial Papers, 1661–1668, 172, 174.

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sioners of the customs, however, reported strongly against the petition, alleging that the Scotch would bring in foreign goods without paying alien duties, and they would then trade with the plantations to the infinite prejudice of his Majesty's duties and of the Englishmen who had property in America. "The plantations," said the commissioners, "are his Majesty's Indies without charge to him raised and supported by English subjects; they employ above two hundred sail of good ships every year, breed abundance of mariners, and begin to grow commodities of great value and esteem, and though some of them continue in tobacco, yet upon the return itt smells well and pays more custom to his Majesty than the East Indies four times over. The Scotch would by this liberty overthrow the essence of the Act of Navigation, and they must not be allowed to trade from port to port, for they are strangers and their bond is not sufficient security." It seems that on the presentation of the petition, the act, so far as it affected Scotland, had been temporarily suspended. But now a special committee of the council, consisting of the lord treasurer, the Earl of Lauderdale, and five others, was appointed to consider the whole question. They reported that the further suspension of the act, except by parliament, would be impossible, as forfeitures for its violation had been imposed by parliament and these could not be set aside; while by such a measure as the Scots desired the object of the act would be entirely defeated.[1]

To this subject no further reference appears until, in 1667 and 1668, the inhabitants of Barbadoes repeatedly complained of the extent to which they suffered through exclusion from the Scotch trade. The supply of servants which they had formerly received from Scotland had been cut off and the loss of this they felt very keenly.[2] The agitation on this subject in Barbadoes was continued for a decade or more, but apparently without result. It did not extend to any other colony among the islands or on the American continent. For other and special reasons, however, a few Scotch vessels were occasionally licensed to visit the plantations. Such licenses

[1] State Papers, Dom. 1661–1662, 74, 149; Colonial Papers, 1661–1668, 58.
[2] *Ibid.* 541–543.

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were granted in 1663 and 1664 on behalf of Captain John Browne, to whom a patent had been issued for refining sugar in Scotland; and again in 1669, at the instance of the Duke of York, to two vessels which were to carry Scotch settlers to his province and remain there a time for trade.[1] To the grant by the privy council of the last mentioned license the farmers of the customs made strenuous objection, but it was allowed to stand.

When the war of 1665–1667 with the United Provinces began, some of the merchants petitioned that, as it would now be dangerous for English merchantmen to appear on the seas, the acts of trade should be suspended and foreigners be allowed temporarily to become England's carriers. But the farmers of the customs protested, on the ground that it would result in the French and others obtaining a too intimate knowledge of the trade and colonies of England, and that it would lay up English vessels and tend to attract their mariners into foreign service. The Dutch, they also said, would be quite as likely to seize goods if they were in neutral vessels, as they would if they were in those of England. Because of these very urgent reasons the proposition was dropped, but careful provision was later made by the government for convoys and that the Virginia and Maryland ships should sail in fleets for their common protection. In November, 1665, Secretary Arlington wrote on behalf of the king to Governor Berkeley that, as the previous summer serious losses had been suffered because on the homeward voyage the vessels had not kept together, he was to see to it that the next spring the Virginia and Maryland ships should sail in one fleet, leaving for England as soon after the first of April as the winds would permit.

Following earlier practice, and for the purpose of keeping the fleet in good order and standing together for defence, Governor Berkeley was also commanded to appoint one vessel in the fleet as admiral, another as vice admiral, and a third as rear admiral. The fleet should sail direct for

[1] *Ibid.* 156, 258; Colonial Papers, 1669–1674, 13, 16; N. Y. Col. Docs. III. 180, 181.

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Fayal,[1] where they could find advice or a convoy; if not, they should wait eight days and then make for the "Soundings," where, if they met no English ships, they should touch at the first port that they could make in the west of England. On May 1, 1666, as thirty ships were ready — though among them none of the Londoners — Berkeley issued the license to sail for Cape Clear and wait there for a convoy. The admiral, vice admiral, and rear admiral were duly appointed. The following November the orders were renewed, this time for the Virginia ships to sail homeward in three fleets; but the ocean was so infested by pirates and trade so interrupted by the great London fire that a temporary embargo became necessary both in England and Virginia. A guardship of forty-six guns had also been sent to James river as a protection for the merchant vessels. But it was out of repair and proved wholly inadequate. Early in June, 1667, a small Dutch squadron appeared, destroyed the guardship and five or six merchantmen and captured several others. Berkeley and his councillors tried to induce the captains and crews of the merchant vessels, which were lying in York river, to attack the enemy before they left the capes, but without result.[2]

At the beginning of the next war (January, 1673) the Duke of York, as lord high admiral, ordered a convoy of two armed vessels for the ships bound for Virginia. When the time came only one vessel, however, was available, and that was the king's hired ship under Captain Thomas Gardner. After Gardner had reached Virginia with the fleet, Berkeley ordered him to repair to Lynnhaven bay on the Chesapeake and there watch for the enemy. It was while Gardner was watching and the merchantmen were preparing to sail that Evertsen and Binckes appeared with eight Dutch ships of war, and after some resistance sunk five of the English and captured eight. This event, as well as the

[1] The destination was later changed to Cape Clear on the coast of Ireland, and Berkeley was instructed to communicate this to the other colonies. These facts may be found in a Ms. volume of Ancient Records of Virginia, in the Library of Congress. A copy is in the Library of the Va. Hist. Soc.

[2] See Colonial Papers, October 8, 1679.

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descent of 1667, were excellent reminders of the risk which attended trade in time of war. They afforded proofs also of the need of stronger defences in Virginia and of adequate guardships and convoys. But the war passed without any material change, and during the fourteen years of peace which followed, affairs were allowed to drift in their accustomed course. The system of convoys which was thus inaugurated for the tobacco colonies was later extended and became a permanent feature of their trade with England in time of peace as well as war.

In the British commercial code, as thus far developed, no restriction had been laid upon intercolonial or coastwise trade. But it gradually became evident that violations of the principle of the staple might and did result from neglect in this direction. Enumerated commodities — especially tobacco — were shipped from the places of production to other colonies where they were not raised, and where no precautions were taken to prevent illegal traffic in them, and thence they were sent direct to the continent of Europe. Trade of that nature also furnished ample occasion for the importation into the colonies of European goods which had not passed through English ports. Owing to complaints respecting this traffic, the act of 1673[1] was passed by parliament. It provided that, if any ships should come to the plantations and load with enumerated commodities and should not give the required bonds to land them within the realm, certain specific duties should be collected on the commodities by officers in the plantations. White sugar should pay 5*s.* per hundred-weight; brown and Muscovado sugar, 1*s.* 6*d.* per hundred-weight; tobacco, 1*d.* per pound; cotton, ½*d.* per pound; ginger, 1*s.* per hundred-weight; logwood, £5 per hundred-weight; fustic, 6*d.* per hundred-weight. Authority to enforce the act was given to the commissioners of the customs in London, and they were authorized to appoint subordinates resident at the ports in the colonies where these duties were to be collected. As the act of 1673 provided for the levy of duties, while its predecessors required the granting of bonds and the examination of registry of vessels,

[1] 25 Car. II. c. 7.

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collectors of the customs with jurisdiction over all these matters were soon appointed by the London commissioners for Virginia, Maryland, the Carolinas, New York, and Massachusetts. The history of administration under the acts of trade during the next fifteen years can best be illustrated by reference to the more noteworthy experiences of some of these officials.

If we are rightly informed, Edward Digges, the auditor of Virginia, was for a time the collector in that province. But his place was soon taken by Giles Bland, son of John Bland, the London merchant who had written the able memorial against the policy of the acts of trade. Giles Bland soon became involved in a violent personal quarrel with Thomas Ludwell, secretary, into which Governor Berkeley was also drawn. Bland was fined £500 by the council sitting as general court without a jury. An appeal was carried to England, where hearings were held; but before a decision was reached Bacon's rebellion occurred, in which Bland appeared on the side of the insurgents, and at its close paid the penalty on the scaffold of his opposition to the governor.[1]

But of immediate importance in this connection are the statements of Bland concerning customs administration in Virginia in 1675. In a letter to Berkeley, and in other letters to the authorities at home, he states at length that both Ludwell and the governor, acting as he supposed under the influence of parties who were immediately interested, were clearing vessels for other colonies loaded with tobacco which was subject to duty under the act of 1673. He also charges them with entering vessels from other colonies, from Ireland, from the continent of Europe, and from England *via* continental ports, without proper inspection or sight of their bonds. Seizures attempted by Bland and his deputies were ignored, and the collectors of the Virginia impost on tobacco were assuming to act as royal customs officers. Bland urged the governor to establish a custom house at Jamestown and turn over the business to the properly accredited officers. Whatever the possibilities of the case might have

[1] Egerton Mss., copies in Library of Congress; Colonial Papers, 1669–1674, 609, 624; *ibid.* 1675–1676, Addenda, 298, 379, 392.

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been, the quarrel between Bland and Ludwell, followed as it was by the breach with the governor, defeated all chance for the time of establishing a royal customs service in Virginia. After a violent outburst of anger, Berkeley suspended Bland from his office, telling him that, if he ventured to perform its duties longer, he would lay him by the heels.[1] The appointment of Bland was evidently an unwise one, but his statements cannot be dismissed as a mere outburst of anger and prejudice. We know that Berkeley deplored the effect on Virginia of the acts of trade. Evidence, moreover, that he was conniving with merchants and others to defeat the objects of those acts would not be wholly inconsistent with his later attitude in other matters. If Bland's allegations were true, they indicate that the mere substitution of a royal executive for one selected by the colonists or by a proprietor would not, after all, prevent the colonists from pressing their own interests. Such a result would be in harmony with what, under the circumstances, would naturally be supposed.[2]

In 1675 attention was prominently drawn to the violations of the acts of trade by knowledge of what was occurring in New England. Enforcement of these laws had borne a part in the earlier correspondence between Massachusetts and the crown. But in May, 1675, the commissioners of the customs reported to the council for foreign plantations, and at the latter's request,[3] that, as they were informed, several ships

[1] Egerton Mss.

[2] The feeling of many in Virginia in reference to the act of 1673 is doubtless well expressed in the statement of grievances from Cittenborne parish after Bacon's rebellion. Va. Mag. of Hist. III. 38. See also Lower Norfolk Co. grievances, *ibid.* II. 170. "Whereas theire is a penny impost upon all tobacco shipped into any of his majesties plantations, to ye Injury of this his countrey and almost ye ruine of many of his majesties subjects in ye year 74: wee had perished but for ye New England supply of corn and yt very bare by reason they could not have tobacco, it was several hundreds of pounds damage to us, Besides other necessaries wee are at a cheaper rate supplied with from New England, which this debars." The comment of the royal commissioners on this was (Winder Papers) that the complaint against the act was false; it was passed to keep the New Englanders from defrauding the king of his customs.

[3] Colonial Papers, 1676, 231. This report was a result of the attention to New England affairs in general which was aroused by the agitation of Mason and Gorges.

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laden with commodities from the Continent of Europe had landed in New England contrary to law. Thus the staple right of England was being defeated. It was also possible that commodities were being sent from the colonies, either direct or through New England, to the Continent. But respecting the extent to which this form of trade existed, the commissioners confessed that they had no definite information. They, however, suggested that the governors should be required to take the oath for executing the law, and be instructed to seize all vessels which were illegally importing European goods and to take bonds with securities that all enumerated commodities should be exported direct to England.

The committee for trade and plantations presently instituted inquiry to ascertain whether all the governors had taken the oath and had made return to the officers in London of the bonds taken to insure the legal exportation of enumerated commodites. But it took until October to procure, through the lord treasurer, from the commissioners of the customs, a report that they did not know what persons had been appointed to administer the oath to the governors, or what they had done. As to the return of bonds from the continental colonies, the officer in charge had not received any, or any lists of ships, except from Charles Calvert, who at the time was both governor and collector in Maryland: a few[1] during the years 1673 and 1674 from Virginia, and eight, taken during 1674, from Massachusetts. Respecting the oaths, inquiry was continued at the offices of the secretaries of state, but with what result we are not informed.

In January, 1676, the English merchants began seriously to complain of the violation of the acts of trade in New England. They stated that the New Englanders — meaning especially the inhabitants of Massachusetts — traded directly with their own ships to most ports of Europe, and encouraged Europeans to trade with them. By this means all sorts of merchandise were imported from Europe directly into New England and thence carried to all the other colo-

[1] Colonial Papers, 1675–1676, 231, 235, 287, 297, 309.

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nies and sold at cheaper rates than any goods which could be sent direct from England. New England had therefore become a mart and staple for the colonies, and in consequence English trade and navigation were suffering. Twenty-eight signatures were attached to this petition, and we are informed that Robert Mason was concerned in its presentation. The extent to which its statements were true it is impossible exactly to state. That they were exaggerated and too sweeping there is little reason to doubt. In this respect they were similar in tone to the other manifestoes against Massachusetts which Mason and Gorges inspired. But evidence comes from North Carolina a little later than this time, which tends to confirm a part of the allegations of the petitioners. The records of the so-called Culpepper's rebellion in that province abound in references to a round-about trade in which the inhabitants of North Carolina, of New England, and of Europe were together concerned. Many of the merchants also, as we shall see, gave testimony which closely agreed with the statements of the petition. The disposition of the New Englanders was in no respect averse to violations of the acts of trade, many indeed believing that the colony was not bound by them without its own consent. It is evident that their professions of obedience were formal rather than real, and that they would persistently follow their own interests unless pressure were brought to bear to prevent their doing so.

The petition[1] of the merchants at once attracted official attention. It was handed over by the privy council to the lords of trade for investigation, by whom it was debated at length. It was seen that the ambiguity in the language of the act of 1673 might be responsible in part for the difficulty. The object of the law was to check intercolonial trade in enumerated commodities because that traffic facilitated smuggling. The imposition of specific duties was the method of regulation that was chosen. The intent of the legislators was to collect the duty from all who failed to give bond that their cargoes would be shipped direct for England; and if such cargoes were found in any colonial ports with the duties

[1] Colonial Papers, 1675–1676, 337, 338.

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unpaid, they were to be subject to seizure. This was in the interest of fair traders, and they were rather more likely to be British merchants than colonial. But the merchants, especially those trading to New England, interpreted the act to mean, that if they paid the duties and made the declaration that the goods were bound for some other plantation, they were thereby exempted from the obligation of giving bonds and might carry goods freely to Europe. In 1676 the statute was referred to the attorney general, Sir William Jones, for interpretation. He declared that in case of ships which came from places other than England (meaning the English colonies) the duties must be paid and bond also given to carry goods either to England or to English plantations.[1] This interpretation was confirmed by later instructions, and was established by express provision in the act of 1696.[2] Under this definition the export duty appeared merely as an additional penalty, by the payment of which it became legally possible to carry enumerated commodities in colonial vessels to plantations other than those in which they were produced. As a matter of fact, however, when these goods reached the northern colonies, especially those of New England, they were likely to be shipped to the Continent of Europe or elsewhere outside the realm.[3]

Shortly after the attorney general delivered his opinion a ship from New England, laden with tobacco which it was intended to land on the Continent, was discovered at the island of Jersey and its seizure was ordered. Early in April the petition of the merchants was again read, and those who had signed it were ordered to attend and make good their statements. But before further steps were taken, the council for trade and plantations was dissolved and the committee took its place.[4] As this was accompanied with an increase of the

[1] Chalmers, Annals, 317–324; Colonial Papers, 1675–1676, 337–341.

[2] 7 and 8 Wm. III. c. 22.

[3] A very clear view of the working of this act may be obtained from an Additional Instruction for its enforcement in New England, which was given to Governor Andros in October, 1686. Laws of New Hampshire, I. 169. In their efforts to interpret this act the older writers have fallen into the greatest confusion.

[4] Colonial Papers, 1675–1676, 358, 360, 371, 374.

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number and dignity of the statesmen who were now to devote their attention directly to colonial affairs, the change was followed for a time by an increase of activity.

A circular letter was now sent to the governors and proprietors, accompanied by heads of inquiry concerning the affairs and condition of their colonies. The attorney general was ordered to prepare a commission for administering the oaths required by the acts of trade. The mercers and silk weavers[1] of London added to the petitions of the merchants a statement that New England was supplying the other colonies with silks and cloths which they were bringing direct from France, Italy, and other parts beyond seas. The trade of English producers, they said, was thus being ruined. Brandy, sugar, oil, and other commodities were being imported through New England and distributed among the plantations in the same way. By this trade, according to their estimate, England was losing in customs duties £60,000 per annum. They prayed that the law might be enforced.

On April 24 several merchants who trafficked with New England were called in one by one and questioned in reference to irregularities in the trade of that section. They were asked whether ships had not gone from New England directly to France, Spain, Holland, Germany, Scotland, Ireland, and other parts of Europe, carrying sugar, tobacco, logwood, wool, hides, and other commodities; also whether they had not returned direct to New England with cargoes of brandy, French and Spanish wines, hats, druggets, ribbons, linens, silks, ironware, and other manufactures. Some, when questioned, pleaded ignorance or avoided direct replies. "But[2] most declared plainly how all sorts of goods growing in other plantations were brought to New England on payment of the duties payable by the Act for going from one plantation to another; that they went with these goods, and many times with ladings of Campeachy wood which they ventured to fetch from the places and to trade to all parts of Europe; that in exchange for those goods they laded what

[1] *Ibid.* 374–377.

[2] *Ibid.* 377, 379. The quotation is in the language of the Calendar.

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each country did afford." Even now, they said, two or three vessels were loading in Holland. They sailed back to the plantations without touching in Old England, except when they saw fit. The result was that the commodities thus imported were sold in the plantations twenty per cent cheaper than the prices for which English merchants who traded under the act could afford to sell them. If this, they concluded, was not prevented, it "would quite destroy the trade of England there, and have no sort of dependency in that place from hence."

This statement, though not based on official investigations, was impressive and quite in harmony with the preconceived ideas of the officials who listened to it. They at once resolved that a commission should be sent to all the colonial governors authorizing the administration to them of the oaths to enforce the acts of trade; that customs officers should be appointed in Massachusetts, and in case the colony refused to admit them, the other colonies should be forbidden to trade with them. How this measure was to be enforced was not stated. Finally, it was resolved that the captains of the royal frigates should be commanded to seize offenders against the acts. This is one of the earliest, but by no means the last, proposal that the navy should be employed to enforce the commercial code. The commission for administering the oaths was soon prepared, and probably sent to all the governors, but the appointment of a royal customs officer[1] to reside in Massachusetts was not yet seriously considered by the privy council. Before that was resorted to, Randolph was sent on his first mission to New England. The statements, however, which were made by him, both before and after his return, were, as we shall see, quite in harmony with the testimony of the merchants. But before events proceeded further in New England, the Culpepper rebellion in North Carolina threw light on trade conditions along that coast.

Thomas Miller was appointed, in 1676, royal collector of customs for North Carolina. He entered upon his duties in July, 1677. Timothy Biggs was controller, and Miller

[1] *Ibid.* 385, 390.

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had a deputy, named Hudson, who served in the lower precincts near the coast. Such was the extent of illegal trade that Miller and his deputy were able in a few months to seize 817 hogsheads of tobacco, and European goods to the value of £500 and more. Other royal dues, partly in the form of bonds forfeited for illegal trading, were also recovered by Miller. The fact that Miller thus disturbed long standing trade relations with New England and Europe doubtless contributed strongly to provoke the outbreak in December, 1677, which resulted in his imprisonment and the assumption of the office of collector by John Culpepper. The commodities and money which had been seized were also taken by the insurgents. After more than a year Miller escaped and returned to England. There he found Culpepper and Zachary Gillam, a New England trader to the North Carolina coast. Both were arrested. The committee of trade and plantations summoned the Carolina proprietors, the various parties to the case, and certain merchants to a hearing in February, 1680. There the testimony was received concerning the rebellion in general and the seizure of the king's revenue and imprisonment of his collector in particular. Culpepper, who was present, asked that he might be tried in Carolina, but, if that were not possible, he freely acknowledged the truth of the charges against him and asked for pardon on his returning the property which had been seized. Gillam was later able to show that he had not been concerned in Miller's arrest, though he had sold firearms and probably other articles freely to both parties.

The commissioners of the customs urged that Miller be restored to his place as collector and his losses made good, that full inquiry be made in the colony concerning illegal trade and arrears of customs, and that all who had seized the king's customs or interfered wrongfully with their collection should be obliged to make the losses good. Finally, they would have all who were in authority in the province enjoined to assist in the execution of the laws of trade. So far as we know, however, no one of these things was done. Culpepper, for the part he had borne in the overthrow of the proprietor's government, was brought to trial

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before the King's Bench under the act 35 Henry VIII. ch. 2, which provided for the trial before that tribunal of cases of high treason when the offence was committed outside the realm. As has been stated in another connection, by the interposition of the Earl of Shaftesbury and his assertion that North Carolina did not possess a regular government and hence that the accused could have been guilty only of riot, Culpepper was saved; and we are not able to state that Culpepper and his associates were compelled to make restitution, or that Miller was restored to his office, or that[1] a successor was appointed.

In Maryland, soon after 1680, the officials of the royal customs came into conflict[2] with the proprietor and his officials. In that province the export duty of 2*s*. per hogshead on tobacco was collected by the officials of the proprietor, while the duties which accrued under the act of trade of 1673 were received by a collector and surveyor who were appointed by the king. The latter officials also guarded the rights of the king under the laws of trade in general. Christopher Rousby and Nicholas Badcock were the royal officials, the former, who was the superior officer, having been recommended for the position some five years before by Charles Calvert himself. But, beginning in April, 1681, Calvert wrote several letters to the Earl of Anglesey, the lord privy seal, in which he bitterly complained of the conduct of Rousby and demanded his removal. He called him knave and devil, and declared that his arbitrary conduct and the heavy fees which he exacted were driving traders from the province. He would show the proprietor neither his commission or instructions and would not allow merchants to submit to the governor the registers of their

[1] N. C. Col. Recs. I. 244, 264–333; Colonial Papers, June 10, 1679, January 16, 1680, *et seq.*

[2] Md. Arch., Proceedings of Council, 1667–1688, 274 *et seq.*; Colonial Papers for 1681; especially December 15, 1681, and February 8, 1682. Rousby had been sheriff of Calvert county, had been employed in Indian affairs, and was active in many relations. In 1677 or 1678 high words are said to have been passed between Rousby and the proprietor, but of their precise occasion we are not informed. Md. Arch., Proceedings of Council, 1671–1681, 22, 77, 143, 200, 227–231.

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vessels, lists of seamen, and bills of lading, all of which was required by law. The charges, which were reiterated in violent language, implied that Rousby was habitually sacrificing the interests of both king and proprietor to his own profit. Vincent Lowe also charged Rousby with being an exclusionist, an opinion the truth of which is indicated by expressions in Rousby's letters which reveal his admiration for the Earl of Shaftesbury.

Rousby soon returned to England, where in due time he was called to answer the charges set forth in the letters of Lord Baltimore. After he departed a dispute[1] arose between the proprietor and Badcock, the latter now being the sole customs official of the king in the province. Three vessels were about to sail from Maryland, at least two of which carried tobacco as a part of their cargo. The certificates, however, which they submitted, mentioned Ireland as well as the realm.[2] Badcock, therefore, though doubtful at first, finally insisted that he should collect the duty of a penny a pound for which, in such cases, provision was made in the act of 1673. Lord Baltimore, however, erroneously claimed that the act by which the name Ireland had been excluded from the bonds had expired, and therefore that the duty should not be collected. High words passed, and the vessels were allowed to depart without paying the duty. Both parties sent complaints to England. Badcock claimed, though with evident exaggeration, that the king had been damaged to the extent of £2000 or £2500.[3] This case came before the authorities in England in connection with the charges against Rousby.

Rousby presented to the commissioners of the customs a denial[4] of all the important charges which Baltimore and his friends had lodged against him. He also advanced the theory in explanation of them that the proprietor desired to secure the two royal customs offices for his relatives and dependents. When the news arrived of the affair with

[1] *Ibid.* 279, 358, 363–370.

[2] This was in violation of the act, 22 and 23 Car. II. c. 26 (1670).

[3] Baltimore states in one of his letters that Rousby had repeatedly stated that he was not in the habit of collecting more than £100 a year under the act of 1673.

[4] *Ibid.* 289, 292.

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Badcock, and especially the charge that in consequence of it the king had lost so heavily, it told in favor of Rousby. The proprietor, moreover, presented no testimony which was more definite than the statements contained in his letters. For this reason the committee of foreign plantations, after a hearing, reported that Rousby should be sent back to Maryland and there continued in the execution of his office. This was confirmed and a letter was sent to Baltimore, in which he was reproved for having wrongfully made such violent charges against the collector without having previously given him an opportunity to reply to them in Maryland.[1] Baltimore was also censured for his conduct toward Badcock, and ordered to make good to the crown the alleged loss of £2500. He was also told that his conduct might justly occasion the issue of a writ of *quo warranto* against his charter.

When Rousby returned, the lord proprietor had himself gone to England and had left the government of the province in the hands of the council. At its head was Colonel George Talbot, a man of hot Irish blood and a papist, one who had been unpleasantly prominent in efforts to settle the extreme northern part of the province and to extend the sway of Lord Baltimore to Delaware Bay. Late in October, 1684, while the royal ketch *Quaker* was lying in Patuxent river, Talbot came on board. Rousby was already there, and the two took supper with the captain.[2] Talbot, while maudlin drunk, provoked an altercation with Rousby. Before it had proceeded far he drew a dagger and inflicted a mortal blow upon the king's collector. Talbot, though the murder was committed in Maryland waters, was at once detained as a prisoner on board the ketch and taken to Virginia. Lord Howard of Effingham, in view of the fact that Rousby bore the king's commission and that he was murdered on a royal vessel, declined to surrender Talbot to the Maryland authorities unless ordered to do so by the English government.[3] Talbot escaped, but soon gave himself up, and

[1] *Ibid.* 346. [2] Colonial Papers, November 26, 1684.

[3] Md. Arch., Proceedings of Council, 1667–1688, 453; Colonial Papers, 1685–1688, 18.

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in April, 1685, was tried in Virginia and found guilty of murder.[1] Through the influence of Lord Baltimore in England, however, a pardon for Talbot was obtained and he disappears from Maryland history. Nehemiah Blackiston was appointed as Rousby's successor.[2]

The first period of Edward Randolph's residence in Massachusetts as collector, searcher, and surveyor of the customs was between December, 1679, and March, 1681. He was appointed under a commission from the lord treasurer,[3] and, like all the royal customs officers who served in the colonies, his salary was paid by the English government. He appointed deputies: one or more in Boston, probably one at Salem, and one, Captain Barefoote, at Piscataqua. Randolph's duties, like those of other customs officers, were to see that all vessels trading to the colony were manned and navigated according to law, that the bonds and certificates required by the acts of trade were given and exhibited on the departure and arrival of vessels, that enumerated commodities were shipped direct to the realm, that no European goods which had not been reshipped in England should be smuggled into the colony, and that the duties which accrued under the act of 1673 were paid. If possible, he must seize and secure before the courts the condemnation of all vessels which were found engaged in illegal trade. As illegal trade was closely connected with piracy and privateering, his duties extended also to some interference with these chronic evils. In his efforts to accomplish this task Randolph stood almost alone. His previous errand to Massachusetts had made him an object of suspicion and hate. His present errand increased that feeling. As in other colonies, no provision was made for a custom house, with its equipment of officials, or even for a public office where the king's business could be transacted. During the second visit of Randolph to the colony as collector, we learn that his office was kept in his own house.[4]

[1] Colonial Papers, *ibid.* 173, 188, 216.

[2] Md. Arch., Proceedings of Council, 1667–1688, 436, 484, 526.

[3] Colonial Papers, 1677–1680, 253, 378. Toppan, Edward Randolph, III. 42, 47, 102.

[4] His wife and some other relatives then accompanied him. But during his two previous visits he was alone, and not unlikely occupied lodgings.

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For aid in the performance of his unwelcome duties he had to depend wholly on residents of the colony, and their help would be given at considerable risk to their reputation, if not to their personal safety. If his deputies attempted seizures at night, they might offend against the police laws of the colony, while a seizure in the daytime would usually bring them into conflict with the hostile mob. All suits to which the king was a party must be tried in the courts of the colony, and before juries whose members shared fully the prejudices which were abroad in the community. Juries were sworn to obey the laws of the country. The influence of the clergy was cast wholly against him, and among the magistrates, Bradstreet, who was elected governor in 1679, was the only one to whom Randolph refers as inclined to see that justice was done him. The lords of trade were quite within the truth when they confessed that, under the conditions, little could be expected from the activities of one man.

Randolph at once reported [1] that, notwithstanding the two laws which Massachusetts had passed for the enforcement of the acts of trade, no goods had been seized. No officers had been appointed, or other administrative machinery created, for the purpose. He found the opinion in every man's mouth, that Massachusetts was not subject to the laws of England until they were put into force by the colony itself. Before the courts of Massachusetts, as was declared by Danforth in the trial of the pink *Expectation*, Randolph could act as an informer, but of course not as a prosecuting officer. Randolph could not be sure that the oath for the enforcement of the acts of trade had been administered to the governor. The Boston merchants put the colonial interpretation on the law of 1673, to the effect that, if the duty was paid on tobacco, the exporter might carry it to any foreign port he chose. In the absence of courts whose judges were of royal appointment, and in view of the fact that certain privateers had lately gone to the West Indies, whence they were expected to bring prizes, he urged that an admiralty court might be established. This was a

[1] Colonial Papers, 1681–1685, 103; Toppan, III. 57–67.

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demand which Randolph never ceased to urge, until, twenty years later, he saw his desire accomplished throughout the colonies. Experience and personal ambition soon convinced him that he ought to be granted a commission under the great seal, and be given authority to build a custom house or office at Boston, where the masters of all vessels should be required to enter and clear and receive their despatches. He also desired that the customs officers, both in the colonies and at the English ports, should be instructed to detain vessels from Massachusetts which did not bring proof of having cleared with Randolph. The only assistance which he received from the officials of Massachusetts was an order from Governor Bradstreet to the marshals and constables of the three counties to give him their aid.

During the first period of his official residence in the colony Randolph prosecuted nine complaints before the county courts for violation of the acts of trade. In all these cases except one the accused was cleared by the jury, and in that one, though the master of the vessel was fined £40 for opposing his Majesty's officer while in the discharge of his duty, the money was ordered into the treasury of the colony for its use.[1] Since Randolph's complaints necessitated the holding of special sessions of court, he was forced in each case to pay £10 to meet the extra expense which was thus occasioned. The king was thus forced to pay costs. The charges which Randolph made against the parties in question were for importing goods direct from the Continent of Europe or from Ireland, for unloading goods before entry, for attempting to land Virginia tobacco without entry and also to smuggle the same out of the colony. Thus the result of the first effort to enforce the acts of trade in Massachusetts was negative. Captain Walter Barefoote was appointed by Randolph his deputy on the Piscataqua. In the spring of 1680 a ketch belonging to Portsmouth and bound from Maryland to Ireland was seized by Randolph's order. But its master by action in a special court recovered damages against Randolph, and the latter for alleged hasty speaking on this occasion had to publicly apologize. Bare-

[1] *Ibid.* 84; Suffolk Court Files, Vol. 22.

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foote was also fined for his insolence and for presuming to set up a customs office without the consent of the president and council. The conduct of Massachusetts was imitated in every point.[1]

When Randolph returned to England, he secured opinions[2] from Attorney General Sawyer to the effect that cases such as those in which he had been concerned could not be appealed before the privy council, but that the king could not be forced to pay costs, and that if the proprietors recovered, as provided by the acts of trade, one-half should go to the king and one-half to the informer. Sawyer's opinion in reference to appeals was not accepted by the other crown officials, and, as we shall later see, the obligation to allow appeals, especially in cases relating to the king's revenue, was enforced. Randolph also assailed the right of Massachusetts to levy taxes, and obtained from the same law officer the opinion that the colony did not possess the right to levy impositions on any but its own freemen. If this were true, it had no right to levy any import duties, or any direct taxes, on non-freemen. This opinion was in harmony with the law of municipal corporations, and the principle on which it was based was made use of in the case of the crown against the charter of the city of London. It was also to be used with telling effect in the case which was already being made up against the charter of Massachusetts. Those who were attempting to develop a corporation into a commonwealth were much more exposed to attack on technical grounds like this than were the inhabitants of a province, for a province was a public legal structure at the outset.

When Randolph returned to New England he went as deputy of William Blathwayt, who had recently been appointed auditor general of all the royal revenue from the plantations except that which came from the customs.[3] He also carried with him a commission as customs officer which had passed the great seal. A letter was sent to Massachusetts from the king, in which he expressed himself as very well satisfied

[1] N. H. State Papers, XIX. 662–665, 683, 685; Belknap, I. 180.

[2] Toppan, III. 99; Colonial Papers, 1681–1685, 19.

[3] An auditor of the king's revenue in Virginia had been appointed in 1669.

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with Randolph, he having acted "with all fidelity and circumspection." The magistrates of the colony were therefore ordered to support Randolph, to restore the money which he had been compelled to contribute toward costs of court, to account to the crown for one-half of the forfeitures which had been received, to permit appeals in cases relating to the revenue, and to faithfully execute the laws of trade.[1]

When Randolph arrived again in Massachusetts, near the close of 1681, he found that a naval office had been created.[2] James Russell had been made naval officer at Boston and Benjamin Gerrish at Salem. Upon them had been bestowed full authority to grant entries and clearances to ships, and to receive bonds and certificates as was required by the acts of trade. The object of this measure was to make some definite provision for the execution of the laws, but to do it in such manner as to keep the business in the hands of colonial authorities. Provision was also made in the same act for the publication by beat of drum in the market place at Boston of the acts of trade of 1660 and 1663, but, whether from oversight or intention, no mention was made of the act of 1673. The law also required that caution money should be deposited by the royal collector in advance of all special sessions of court for the trial of revenue cases. This was wholly inconsistent with the command of the king's letter.[3] Randolph at once found the naval office to be an obstacle in the way of his ambition to transact all the king's business in his own office. Therefore he formally protested against the law. He claimed that it was repugnant to various clauses in the acts of trade and in his own instructions, all of which required that the examination of bonds,

[1] Toppan, III. 112; Colonial Papers, 1681–1685, 129.

[2] Toppan, III. 114; Mass. Col. Recs., V. 337.

[3] The statement which the agents made in England concerning this matter was as follows: "That for Ordinary Tryalls in his Majesty's Stated Courts nothing had been demanded or taken of Mr. Randolph. But in Extraordinary Cases where Juryes were summoned at his Instance and Travaild for on purpose, Soe much hath been taken as to defray the charge of theire necessary Attendance, which will be prevented for the future and all cases reserved to the Ordinary Tearmes, if the Officer be directed thereto." Toppan, III. 198.

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certificates, and securities, and the granting of entries and clearances, should be under the immediate charge of the governor and of the king's collector.

Going back to the year 1645, when the first detailed act was passed by Massachusetts for the levy of customs duties, Randolph argued that the law which he was discussing simply provided for an old office with a new name. Richard Russell, the father of the naval officer, had for years been collector of colony customs, and had been succeeded by Captain Hull. Their functions, in Randolph's opinion, had been much the same as those of the naval officer. In his opinion, the new office was as much a part of the fiscal system of the colony as was its predecessor, and in this he was substantially correct. His practical conclusion was that under the revenue acts of the colony, even with a naval officer, it made no difference where vessels came from. "If I seize any ship," he wrote, "not legally qualified, her entry at this naval office is sufficient plea." Masters anchored below the castle, he further stated, until they disposed of prohibited goods, and then entered with the naval officer. At a date, probably in the spring of 1682, Randolph wrote that since his return he had seen only three original certificates and those the governor had retained in order that they might be shown him. As the law for the establishment of the naval office contained no specific provision empowering officers, in their search for smuggled goods, to break open warehouses or other suspected places, Randolph repeatedly found himself balked when he undertook to make searches and seizures.

In any case Randolph was dependent on the will of colony officials when a warrant was to be issued which called for the assistance of a constable in an act of seizure. This he was not sure of obtaining. Randolph also had more than once to listen to insulting words concerning himself; he was threatened with arrest, damages were assessed against him, he was resisted while attempting to make seizures, his deputy was actually put under arrest. The slightest possible recognition was given to his commission.[1] In the cases

[1] Toppan, III. 121, 133–140, 143, 149–153, 154, 163–175, 181, 182.

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which he brought to trial the collector fared no better than he did on his previous visit. "The *Hope* of Boston," says one entry, "seized for unlivering before entry. At the Tryall no witnesses were to prove the unlivery after Entry or that the Wines were Shipped at the Maderas as entered. Yet he [Randolph] was cast, [the defense] Insisting that he had no Warrant to seize the Ship. The Governor & Magistrate allowed his [Randolph's] Patent sufficient Warrant & sent out the Jury 3 times, but they would not alter the Verdict." When, in August, 1682, the agents stated in England, "There hath yet been noe forfeiture of Ship or Goods," they set forth with clearness and brevity the failure of Randolph's efforts. Randolph's own unsupported statement, that since his coming the customs receipts of Massachusetts had fallen off from £1000 to £400 per annum, is not sufficient to counteract the weight of evidence contained in the simple fact that his attempted seizures had led to no forfeitures.[1]

The arrival of Cranfield as governor of New Hampshire, in October, 1682, encouraged Randolph to believe that he might meet with better success on the Piscataqua. Cranfield had been commissioned as vice admiral, and this authority he later desired to have extended over the coast from the Kennebec river to Fairfield in Connecticut. Relying on the assistance of the royal governor, Randolph caused a warrant to be issued for the seizure of the ketch *George*.[1] This vessel, he found, had arrived in the Piscataqua two months before, but had produced no certificate to show that she was English built. She belonged to Scotch owners, and was manned and commanded by Scotchmen. Cranfield, in support of Randolph's warrant, wrote to Stileman, the captain of the fort, not to allow the vessel to depart, and called a special court for her trial. But the vessel was allowed to drop down the river and escape. The jury brought in a verdict with costs against the king. Cranfield removed Stileman from command at the fort and from the council, and wrote the governors of various islands in the West Indies to seize the

[1] Toppan, III. 166, 200.

[2] *Ibid.* 217, 257; Colonial Papers, 1681–1685, 362, 368.

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ketch, if she came thither. The affair simply revealed the fact that Randolph could no more rely on juries and native colonial officials to second his efforts among the settlements of northeastern New England, than he could in Massachusetts. All that he could now do was to lodge an appeal before the privy council against certain parties by whom he had been defeated before the courts of Massachusetts. When this had been done, events had reached the point in England where resort must be had to the *quo warranto*. Randolph was therefore resolved to coöperate in that, and efforts to enforce the acts of trade in Massachusetts under the charter of the company came to an end.[1]

It is true that we have only the statement of Randolph concerning the cases which were brought to trial, and that the papers relating to them which have been preserved are too few to enable one to form a judgment concerning the evidence which Randolph was able to present against the vessels which he libelled. But from a broad view of the situation, taken in connection with the statements of Randolph as a whole, it seems clear that Massachusetts was nullifying the acts of trade. The process by which this is done has been made familiar at other times and places, and one recognizes its characteristics in the events and conditions which have just been described. The theory which was held by Massachusetts concerning its relations to English authority, whether that authority was expressed through ordinance or statute, was that of compact. It always had been such. It had always held that even the acts of parliament which mentioned the dominions were not in force within the colony until they were in some way accepted by the government of the colony. In its declarations of independence from English law, it had excepted no statutes. It is true that it had now recognized the binding force of two of the acts of trade, but it insisted upon enforcing them, if at all, in its own way and by its own officials. The only competent witness whom we have says that they were very imperfectly enforced, if enforced at all. He cites many cases to confirm his state-

[1] Toppan, III. 204.

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ments, and repeats his testimony in communications to many different people and at different times, but always to the same general effect. The Massachusetts authorities knew that the testimony was being given and of what nature it was. They had agents in England, who might have disproved it there if it had been false. It might also have been disproved in the colony itself. But Massachusetts in this matter let her case go by default, and the student is compelled to admit in general, though perhaps not in all its details, the truth of Randolph's indictment. The course which Massachusetts pursued may have been in the interest of civilization, but loyal it was not. It pushed the claims of the local jurisdiction to such lengths as to amount to practical nullification.

But about the time of the dissolution of the Massachusetts company further steps were taken by the English government toward the extension of its customs administration in the colonies. We are informed [1] that about the beginning of 1683 William Dyer, who had been collector of the customs in New York, was sent to the island colonies and to New England to inspect the customs offices, and that he resided for some time in Boston. But Dyer's appointment was temporary and of the details of his work apparently no information has been preserved. In 1685, however, the office of surveyor general of his Majesty's customs in the North American colonies was created and one Patrick Mein was appointed to the position.[2] His commission had special reference to the collection of the duties imposed on intercolonial trade by the act of 1673, though his obligations also extended to the execution of all the acts. He was empowered to visit and search any places where commodities subject to the duties imposed by the act of 1673 were likely to be found. In order to enable him to do this in Maryland, and to make the seizures which might be necessary, Mein was given a writ of assistance by Lord Baltimore's government. Instructions were at the same time sent to all the governors, in which the acts of trade as a whole were out-

[1] Toppan, IV. 5.

[2] Md. Arch., Proceedings of Council, 1667–1688, 521–524.

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lined and their enforcement was required.[1] The ketch *Deptford* was also employed in the service off the Virginia coast,[2] and if a complaint made before the Maryland council was true, Captain Crofts, the commander of this vessel, proceeded with great arbitrariness toward mariners whom he found it possible to mulct. These measures agreed well with the policy of revoking charters and consolidating the colonies, to which the English government had already committed itself; and in New England, if anywhere, the effects of that policy on trade relations might be expected to appear.

From 1682 until after the establishment of royal government under Andros, Randolph's energies were chiefly devoted to the prosecution of the suit against the Massachusetts charter and to the inauguration of the system which superseded it. His office of collector and surveyor was, however, retained, and after he ceased the active performance of the duties of secretary and registrar under Andros, his duties as customs officer were again actively resumed. Boston, Salem, Ipswich, and Great island, at the mouth of the Piscataqua river, were declared by Dudley's council to be the ports of entry for the middle coast line of the enlarged province. Vessels trading to the eastward of Cape Porpoise were permitted to enter at Falmouth. Somewhat later Bristol, Newport, New London, New Haven, Milford, Fairfield, and Stamford were added to the list of the ports of entry. By prohibiting the unloading of any part of cargoes at the Isles of Shoals before the same had been entered with both the collector of the royal customs and the collector of the province duties at one of the specified ports, a blow was aimed at a probable centre of illegal trade. Customs officers were appointed and stationed at the various ports. Coasting vessels were required to make due entries. A large committee of merchants and others, resident in the coast towns, was appointed by the council to consider the condition of trade and how it might be advanced and hindrances removed.

[1] *Ibid.* 446; N. Y. Col. Docs. III. 382.

[2] Md. Arch., Proceedings of Council, 1667–1688, 486–490, 523.

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The records afford evidence of occasional seizures, and we may believe that the existence of a royal government may have had some restraining influence on illegal trade.[1]

But Randolph's correspondence indicates that, as on previous visits, he found his efforts as customs official opposed at nearly every step. Prejudices which had originated in the experiences of past years obstructed his path. He found that some of the members of the council were traders, or were related to those who were such, and they thwarted him when he insisted that the laws of trade should be strictly enforced. Richard Wharton, a councillor, openly declared that the king in appointing Randolph secretary intended to reduce the people to vassalage. Randolph caused five or six ships to be seized, but that again aroused popular opposition. He complains that Dudley refused to assist him. A rival for privileges in the matter of seizures appeared in the person of Captain George of the *Rose* frigate. While his ship was lying at anchor in the harbor of Boston, the captain was allowed to make seizures or to prosecute as an informer. This was an anticipation of a practice which appears with increasing frequency in the next century, that of the bestowment upon naval officers of the right of search and seizure to be used in the enforcement of the laws of trade. That authority, however, was regularly exercised only while the armed vessel was cruising off the coast. Randolph rightly complained because, in this case, it was employed almost at the wharf itself. The marines also interfered with Randolph's deputies when they were performing their duties. When Randolph interposed or complained, he was berated by the captain. The council seems also to have had trouble, not only with Captain George, but with the captain of the frigate *Dartmouth*, on account of disorders committed by their men while on shore in Boston.[2] When summoned to appear before that body, they replied that, if the president had any orders for them in the king's service, they would obey him, "but as for the Councill, they had nothing to do

[1] Dudley Records, 2 Proc. Mass. Hist. Soc. XIII. 248, 252, 256, 264, 271, 276, 278; Conn. Recs. III. 434.

[2] Dudley Recs. 2 Proc. Mass. Hist. Soc. XIII. 270, 273–275.

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with them." Repeatedly and with the greatest formality they were summoned before the council, but they failed to appear though a fine was levied on one of their seamen. Randolph states that he complained of the usage to which he had been subjected, but he found it impossible to secure redress. Captain George seemed to be usurping his functions and, what was an even more serious matter, was taking his fees.[1]

Occasionally, after the arrival of Andros, we hear of the seizure of vessels for violations of the acts of trade, while they were also liable to seizure for breach of the customs law of the province. So much irregular trading went on through Newfoundland, that Andros was ordered not to treat it as a plantation, but like Scotland or any foreign state, and not to permit the entry of European goods shipped at its ports.[2] As the province was enlarged so as to include the middle colonies, Randolph was brought into connection with Matthew Plowman of New York and possibly with other customs officers. Some correspondence ensued, but the connection was too brief to admit of any important results. However much Randolph might have complained of the indifference of Dudley and his council, when the government of Andros fell and he found himself a prisoner, he never tired of asserting that "the bottom and ground of all their complaints" was the enforcement of the acts of trade.[3] This interpretation of an issue which was far broader than his language indicated was characteristic of Randolph and of his tiresome insistence on his own deserts.

The review which we have now presented of the commercial policy of England and of the efforts which were made to enforce it prior to 1690, fragmentary though it is, makes clear the fact that the feature of it which related to the staple was naturally viewed by the colonists as inconsistent with their interests. In the case of most of their imports and of an important part of their exports it imposed upon them, if executed, the necessity of making roundabout voyages and, in connection therewith, of paying customs duties in

[1] Toppan, IV. 92, 98, 107, 114, 125, 128.

[2] *Ibid.* IV. 145, 164, 168, 183, 251, 257, 259.

[3] *Ibid.* 269.

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England. It also tended to restrict them, both in the case of purchases and sales, to the English market. Owing to the location of the British isles, the burden of the round-about voyages was slight in the case of the northern colonies, though it was serious for those which lay to the south and particularly for the islands. The increase of cost which resulted from the restriction of their market and the payment of duties was also felt by all, though not in the same degree. In general, and especially among certain classes and in certain sections, the opposition of interests which was occasioned by the adoption of this policy was too great to be overcome by the sentiment of loyalty as it then existed. The policy, therefore, had to be enforced by specific and rigid administrative measures. It thus affords one of the best illustrations of the methods which had to be used in the administration of government from a remote centre and of the obstacles which it was necessary to overcome if the policy was ever to be made really effective.

The English government in its efforts to enforce the trade policy instituted inquiries at home and inquiries through special agents who were sent to the colonies. It called in the authority of parliament to reënforce that of the executive. It imposed additional duties upon the royal governors, and sought to bind these and the governors of the chartered colonies by special oaths and instructions. It appointed royal customs officials to reside in most of the colonies, and provided for their superintendence by a surveyor general of customs in America. The interests of the empire, as represented in this policy, operated as a threat imperilling the existence of every chartered colony. In connection with its enforcement steps were taken to change the chartered colonies into royal provinces and to unite those provinces into ever larger unions. The colonists found themselves being enveloped in a rapidly extending network of imperial relations.

These measures were to an extent calculated to attain the objects intended. But they were at best legal and official, and were subject to the limitations which apply to measures of that kind. Like the system of religious tests, they rested

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for their effectiveness on compulsion. There was nothing in them to elicit the spirit of loyalty, and much which was calculated to positively discourage it. It was always possible that the officials of the home government in England might neglect their duties and for various personal reasons permit the infraction of the law. The temptation to a similar course of action on the part of royal appointees who were resident in the colonies might be still greater — it was indeed likely to be so, if they identified themselves at all closely with the colonists. In the chartered colonies it was almost inevitable that the royal officials should come into conflict with the local authorities. Instances of the way in which this might come about have been given in the cases of North Carolina, Maryland, and Massachusetts. But the experience of Bland in Virginia, and not a few similar cases at later times, indicated that the creation of royal provinces and the appointment of royal officials by no means fully guarantied the execution of the laws or the establishment of harmonious relations. Even if the royal appointees were faithful and efficient — and many of them were not so — their efforts could only partially overcome the great natural and social obstacles which lay in the path of the enforcement of the acts of trade. The fact of the case was that the principle of mercantilism, as applied to the colonies, rested upon a tremendous assumption. The policy presupposed the existence of a high degree of both political and social unity as the condition of its success. In this case the two conditions were very imperfectly realized. The policy itself was therefore in the nature of an experiment and its history reveals a prolonged and only partially successful struggle against heavy odds.

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CHAPTER VIII

VIRGINIA DURING THE RESTORATION. BACON'S REBELLION

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To the student of the continental colonies Virginia after the Restoration presents the first genuine picture of the royal province, of its characteristics, and of the social and political conflicts which might develop in its midst. Virginia, in the earlier period of its history, had been proprietary; and after that had closed, for about fifteen years it existed under an ill-organized executive. Before that evil had been wholly removed, the outbreak of civil war in England interrupted normal relations with the mother country. The war in turn had been succeeded by the exceptional conditions of the Commonwealth and Protectorate. The return of the king was followed by the restoration of former relations between Virginia and the home government, an incident of which was the creation of an executive within the province itself that was suited to its needs and which for that reason could become permanent.

To Virginians, especially after the Restoration, the fact that they were immediately dependent on the crown was a source of pride. The term "dominion," when applied to Virginia, carried with it a special and dignified meaning, which did not attach to it when it was used in reference to a chartered colony. Virginians had to do immediately with appointees of the crown, with privy councillors and other officers of state in England; not with proprietors and their appointees, or with the elected officials of a corporate colony. They could reflect with pride not only on the fact that theirs was the first colony to be permanently settled, but also that for so long a period they had been the only province, the only dominion in the higher and more dignified sense. This suited well with the natural pride of the cavalier and of the large landed proprietor, with his troops of dependents and his position as official and social leader in his locality. Vir-

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ginians, too, by trade connection and ties of relationship and social intercourse, were drawn into closer union with England than was common among the colonies. English merchant vessels annually visited the harbor of Virginia in fleets; were ever bringing her immigrants and carrying passengers to and from the old world. Correspondence was active between merchants and planters and their agents on both sides of the ocean. This, added to the volume of official correspondence, kept England in closer touch with Virginia than with any other continental colony.[1]

The spirit of harmony and union which had this origin was strengthened by the loyalist temper of the province and by the fact that the only form of religion which existed within it was a somewhat narrow Anglicanism. To support and develop all this the form and spirit of the royal executive were well adapted. The officials who constituted it — Berkeley, the governor, with his councillors, Thomas Ludwell, the secretary, Norwood, the treasurer, Moryson, the deputy governor, and the rest — received their appointments from England and were led by interest, if not by natural inclination, to support the government and its policy. Though for the most part Virginians, they formed the substratum and official framework on which rested the connection between England and the province. Their influence was decisive in filling most of the inferior offices of the colony; it became strong in determining the results of elections and the course of legislation. The governor and the group of councillors who habitually acted with him were able to control a voting majority among the burgesses. By family alliances and in other ways they became the social leaders of the province. In many of the counties they monopolized political power. In the vestries, which now came to fill their membership in many instances by coöptation, they exerted a very considerable influence. As local militia colonels the social and political leadership of the councillors was still further enhanced. They had already secured exemption from taxation for themselves and families. The governor and coun-

[1] See, *e.g.*, The Letters of William Fitzhugh, Va. Mag. of Hist. I–IV.

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cillors, together with those whom they were able collectively to influence, formed a political phalanx, held together by the spirit of loyalty and the advantages of office.[1]

It is thus apparent that conditions in Virginia were analogous to those which were brought about in Maryland by the influence of the Calvert family. There was much that was autocratic in the power of the governor and council and exclusive in their views. Berkeley, who stood at their head, was the ideal and personification of their spirit. In Virginia he reflected the dress, bearing, language, views, and policy of the court of Charles II, especially of the Tory element which held chief sway in that court. To him Cromwell and the Commonwealth were the sum of all villanies, the union of church and crown which had now been restored the essence of all good. Religious dissent and political opposition could expect nothing but harsh treatment at his hands. Though brave and chivalrous, he was as bigoted as the narrowest among the Puritans. In reality the official Anglican oligarchy of Virginia were representatives of the same mental type as the Puritan oligarchy of Massachusetts, though the defence of the traditional system which had come down to them did not call forth the kind and degree of mental activity which distinguished the New England leaders.

So far as one can discover, during the first ten years of his administration Berkeley was an efficient governor. With reasonable diligence he performed his duties both toward the province and the king. We find him actively caring for its defence during the Dutch war. He devoted much attention to efforts which had as their object the raising of other staples than tobacco. Later some parties complained that too much had been spent in building storehouses for such products at Jamestown or elsewhere. So far as was ordinarily attainable in the colonies, the militia of Virginia during Berkeley's administration seemed efficient. Over the interests of the church and of morality no Anglican could watch more carefully than Berkeley. Sessions of the assembly were regu-

[1] See Vol. II. of this work, p. 71.

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larly held; they passed quietly and their product in the form of laws was regularly sent to England for approval. In 1670 the suffrage was restricted to freeholders, while, as in England, the assembly which had been elected under the strong royalist influence of 1661 was, by successive prorogations, continued in existence till 1676. By this means the burgesses, as far as possible, were kept in line with the aristocratic tendencies of the period. The home government was also kept informed of the doings of the provincial executive. Under Virginia conditions Berkeley was the counterpart of Nicolls and Andros in New York, the faithful servant of his masters in England. But he was more. So long did he reside in Virginia, that he became fully identified with its life. Very few, if any, of the royal governors became so perfectly representative of their provinces as did he. At the end he was more a Virginian than an Englishman. So well did he lead his subordinates, that, like Thomas Ludwell, they could hardly find words sufficiently expressive of their admiration for him.[1] For a long period little or no evidence appears of factions within the council, or of conflicts there like those which later agitated the council of New York. Relations were also friendly on the part of both governor and council with the burgesses. The social and political machine, under the management of the governor and councillors, moved smoothly and peacefully on its way.

But, as time passed, faults in the mechanism began to appear. As the governor grew old, he became irascible and avaricious. Not only did he draw his handsome salary and perquisites regularly but, as occasion offered, he added to his landed estate, while he also became deeply interested in the fur trade. That he cared much for the enforcement of the acts of trade is not probable, while it is possible that he profited by their neglect. Meantime, the councillors of his earlier days died or left the province, or for other reasons became unable to attend to their duties. Berkeley himself finally admitted that he was left with much fewer and younger

[1] See Ludwell's Description of Virginia, Va. Mag. of Hist. V. 54; also a memorial of the council to the king, Colonial Papers, October 11, 1673.

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men about him, feeling in time of crisis very much alone.[1] Some said that he had neglected to nominate to the vacancies as they occurred, with the result that there was less opportunity in his old age to counteract his caprice. Some began to use language about his conduct which was as severe as, in earlier years, it had been adulatory.

By 1670 settlements had extended above the middle courses of the rivers. On the outskirts of the colony there was a genuine frontier population, while the inhabitants of the tide-water counties, no longer exposed to Indian attacks, lived in a somewhat matured society and in permanent relations with the outside world. Trade connections with the colonies to the north and south were established. In the lower counties lived the large planters and the great mass of indented servants; there the colonial aristocracy was intrenched, the peninsula of Accomac, because of the broad bay that intervened, forming a district somewhat apart from the mainland. In spite of some expenditures in road building, means of communication overland were very poor, and the rivers were long destined to be the chief avenues of travel. Administratively and socially each county was to an extent a unit by itself, the obstacles to communication between localities being so great that the common life of the province was far from strong enough to overcome them all. Already conditions were beginning to appear which in the next century were to lead to marked differences between the upper and lower counties. Even now a shock suffered by the seaboard counties would not necessarily be much felt in the upper settlements; while, conversely, the effects of an Indian raid would not be distributed equally through the upper and the lower districts of the province.

The same was true of social classes, between which the distinctions were relatively clear cut in the tobacco colonies. The large planters, the small planters and frontiersmen, and the indented servants, each had their distinct circle of interests, and the issues which affected one did not necessarily signify much to the others. The Virginian democracy, which

[1] Winder Papers, Va. State Library, Letter of Berkeley to Ludwell, April 1, 1676.

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passed its sober existence beneath the aristocratic crust of society, was much more intensely colonial than were the officials and great families with their European connections and ambitions. It was possible, on occasion, that the frontiersmen and small planters, assisted by servants, might rise and attempt to throw off the aristocratic incubus as too costly, even though such a course might involve treason to the mother country. And the indented servant — the vital problem of his cramped existence might be touched even by a movement like this. These suggestions indicate how far the society of Virginia — or of any other colony, for that matter — came from being perfectly mobile, and how difficult it is, especially with the scanty information at our command, to estimate the impression made upon different localities and classes by any seemingly general movement.

The freemen of Virginia, even though it was a province, had long enjoyed a considerable degree of self government. For a generation assemblies had met annually, and there was no subject of important concern to the province which had not been in part or wholly regulated by legislation. Not only did the grand assembly appropriate the revenue, and proclaim its exclusive right so to do; but to an extent it regulated the granting of land, it established counties and defined the jurisdiction of courts, it created minor offices and specified their duties, it fixed the amounts of fees, regulated trade and industry, the church, the militia, and relations with the Indians. The scope of legislation was broader in Virginia than in Maryland, and in amount it was more abundant. In the early days, moreover, the council had enjoyed unwonted power. Later also had come the more fully developed self government of the Interregnum. But, as has already been indicated, there was another side to the picture. The provisions for the auditing of accounts were imperfect, and the governor was able to prolong indefinitely the existence of an assembly. By his large appointing power he could control, not only the general officers of the province, but the sheriffs and justices of the counties. Official discretion was also large, while means of communication were poor and the instrumentalities for creating and enforcing

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public opinion were correspondingly imperfect. Political power might and did under these conditions accumulate in a few hands, and the possessors of it were known, in some cases, to violate the laws, to oppress those who happened to be at their mercy, and to use their power for their own advantage and enrichment. After this condition had continued for years, the ruling oligarchy fell under the suspicion in many minds of being worse and more corrupt than it really was. Sweeping charges of public robbery and oppression began to be made and believed. The assembly, through long compliance, seemed to have become a party to the evil and could no longer be viewed as the guardian of liberty or of honest government. The pay of the burgesses and their annual sessions then became to many an occasion of offence and persistent criticism. The small planter especially lost faith in the ability or inclination of the assembly to see that the revenue which came from his hard earnings was honestly expended. By this process were hatched the seeds of revolt.

But there were other and more specific causes which disturbed the equanimity of the province. Nothing contributed more directly to this than did the projects for granting Virginia wholly or in part to proprietors, which were in agitation for fifteen years or more after the return of Charles II. In these plans Lord John Berkeley was prominently interested, and for this reason the governor was able to accomplish nothing in opposition to them. They were schemes of greedy courtiers, who sought by means of a grant secured through influence with the king to divert a part of Virginia revenue into their own possession. Like a number of other similar events during this period, these illustrated the careless indifference with which Charles II would take steps that placed the most serious obstacles in the path of his ministers and tended to defeat the policy to which the government stood committed.

In 1649, early in the exile of Prince Charles, he had issued a grant to a number of noblemen who had remained faithful to the royal cause till the last, among them being Henry, Earl of St Alban's, Lord Culpeper, and Sir John Berkeley.

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This covered the Northern neck of Virginia, — the region between the Rappahannock and Potomac rivers, the mountains, and Chesapeake bay — and included about one third of the province. In course of time some of the grantees died and others transferred their claims. After the Restoration both the old and the new proprietors were inclined to hold the king to the promise which he had made in the time of his adversity. They leased the territory to certain parties, who went to Virginia to secure their claim and begin settlement. Of the proceedings of the agents nothing is known, except that such obstacles were thrown in their way by the Virginians that they could not accomplish their object. In 1662 the king ordered the governor and council of the colony to assist them. In August, 1663, the command was repeated with some emphasis.[1] But no result followed.

In 1667, however, the project was revived in England. In June of that year Thomas Ludwell, secretary of Virginia, whose letters kept both Secretary Arlington and Lord John Berkeley well informed as to the state of affairs in the province, wrote to the latter urging that the king should not establish a company over the colony or place it under a proprietor, because both were very distasteful to the inhabitants. But before this letter reached England, at the request of the proprietors the attorney general was ordered to prepare a surrender of the original patent and a new grant of the same region to the Earl of St. Albans, Lord John Berkeley, Sir William Moreton, and John Tretheway. This was issued on May 8, 1669.[2]

By this patent the right was granted to lay out and enjoy hunting grounds, to sell or lease land and receive the rent therefor. The grantees were also empowered to divide the grant into counties, hundreds, parishes, and towns, to erect cities, churches, and colleges, to endow them with lands and goods, and to enjoy the rights of patronage over them. In the same way they might erect and enjoy the privileges of markets and fairs. They might also establish and hold manorial courts. It thus appears that powers of consider-

[1] Colonial Papers, 1661–1668, 116, 151.

[2] *Ibid.* 475, 476; Colonial Papers, 1669–1674, 22.

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able importance were granted, which might result in the development of local government. Under these the grantees would have been more than mere proprietors of the land; their powers would have exceeded those possessed by the proprietors of Maryland and New Jersey after they had lost their governmental authority.

But the authority of the grantees was also subjected to important restrictions. They were required not to disturb grants which had been made by the governor and council previous to September 29, 1661, and to observe contracts which had been made in pursuance of such grants. Actual residents within the territory at the time when the patent was issued were not to be forced to do suit and service in any manorial court of the proprietors. The residents were also to enjoy all the privileges to which they were entitled under the government of Virginia, to have the right of appeal from the manorial courts to the general court of Virginia, and be subject to the military control of that colony. It was even declared that the laws of Virginia should be fully operative within the grant. From a comparison of the provisions in the entire document, it becomes apparent that in this case it was not the intention of the king to separate the Northern neck entirely from Virginia, as had been done when the grant of Maryland was made; but to create a subordinate fief or proprietorship within Virginia. Though the grantees would hold their land direct from the king, in matters of government the dealings of their colonists with the king would be through Virginia. In view of the relations which the patentees bore to the king, even this was fraught with great peril to Virginia, and might well arouse deep anxiety. It was, moreover, the evident intention of the king to give the patentees the support of his authority. Early in 1670, at their request, he wrote [1] to Governor Berkeley commanding him to assist them in settling the region, and to give them all due encouragement and protection. Berkeley replied in a letter to Arlington: "the Patent, being not two years old, and yet granting all the land taken up nine years before, doth extreamly trouble those who . . . took up land within

[1] *Ibid.* 53.

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that same time and now must have new ensurances. . . . Besides there are many other grants in that patent inconsistent with the settlednesse of this Government which hath no barr to its prosperitie but proprieties on both hands, and therefore is it mightily wounded in this last, nor have I ever observed anything so much move the peoples' griefe or passion, or which doth more put a stop to theire industry than their uncertainty whether they should make a country for the king or other Proprietors."[1] But the representations made by the magistrates and friends of Virginia were successful. No serious attempt was made to found a settlement, and in a short time the patentees resigned their charter to the crown.

But the slight hold which the desires of the Virginians had upon the mind of Charles II appears from his next act. In February, 1672, steps were taken to grant all Virginia for thirty-one years to Lords Arlington and Culpeper.[2] They were to have all lands, receive all rents, and exercise all jurisdictions which had arisen or existed under any grant which had been previously made. They were to receive all arrears of rents and profits which had accrued since 1669. They might subdivide the territory for purposes of local government, erect churches and chapels and present thereto, appoint sheriffs, surveyors, and other local officers, erect manors and hold markets. In this docket no mention whatever was made of the government already existing in Virginia, or of the planters there and their vested rights. If there was danger that the officers of the former patentees might encroach on the rights of the Virginians, that peril was now increased.

Opposition to the proposed new grant was at once begun. In 1674 the assembly voted to petition the king and to send agents to England to labor in the interests of the province.[3] Virginia had already established the precedent of

[1] Winder Papers, June 26, 1671.

[2] Col. Papers, 1669–1674, 334. The docket is here given. In Hening, II. 427, are the heads of what purports to be a demise or grant for years. They are in substance the same as the docket. They appear also in the Colonial Papers. See also Burk, History of Virginia, II. Appendix, 33.

[3] Hening, II. 311.

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keeping an agent in England. Since the return of Governor Berkeley, Francis Moryson had acted in that capacity. Secretary Ludwell and Major General Robert Smith were now joined with him in the work.[1] A poll tax of fifty pounds of tobacco was levied on the tithables of all the counties, and also a tax of the same rate on every person who was cast in a suit, to meet their expenses. The agents were successful in their efforts. Lords Arlington and Culpeper agreed to give up their claims to everything except the quit rents and escheats. In 1681 Arlington made over his claims to Culpeper, and later still Culpeper gave all the claims which he held under the grant to the king.[2] In 1684 the king ordered Lord Howard of Effingham, who was then governor, to collect the quit rents in his Majesty's name, while a grant of £600 a year for twenty years was to be paid to Lord Culpeper, one-half of which was in compensation for his claims in Virginia.[3] But though this satisfactory result was finally attained, much time passed in the interval, during which the fact that a tax had to be levied for such a purpose rankled in the minds of the colonists.

After the grantees had yielded the main point, the agents tried to secure the colonists still further by urging the king to grant them a charter. They reminded him of the precedents for an act of this kind which had been set by the company in the early history of the province. The points respecting which the agents desired guaranties on behalf of the people of Virginia were these: that they might receive full power to extinguish the claims within the Northern neck of all parties except the province and its inhabitants; that the province might not be "cantonized into parcels" by surreptitious grants; that all titles to private estates might be assured; that the governor and council might be residents of the province and have full judicial powers; that, in accordance with all past usage, no tax or imposition

[1] See Hening, II. App. p. 518, for their appointment, and a brief calendar of the papers relating to their mission. Burk, in his History of Virginia, II. App. 33, gives most of the documents.

[2] Hening, II. 521. [3] Colonial Papers, June 24, 1684.

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should be levied on the people of Virginia except by its grand assembly.[1] These proposals, after receiving the approval of the law officers of the crown and the lords of trade, were embodied in an order of council that a charter should be drawn, October 19, 1675. But already the news had arrived of Bacon's rebellion in Virginia, and that brought proceedings of this nature to a standstill. In September, 1676, almost a year later, the king ordered to be passed under the great seal a bill to serve as a charter, but it was brief and non-committal.[2] It amounted simply to a confirmation of tenure of lands, of the high judicial powers already exercised by the governor and council, and of dependence on the crown. The contrast between the spirit and work of Moryson and his colleagues and that of the agents whom Massachusetts was sending to England is great. The former were received with confidence, they plead for objects which were possible, and they secured a hearing. Had it not been for untoward events in the province, they would have won a triumph. Their work illustrates the operation of an agency under normal relations; that of the Massachusetts agents, because of distrust on both sides, ended in failure. The experience of the agents from Virginia had already proven the usefulness of the colonial agency as an institution, and as colonial administration became systematized it was more fully developed and utilized. Though their effort to procure a charter failed, they helped to save the territorial integrity of Virginia, and it was never again imperilled.

[1] Hening, II. 323–327; Burk, II. App. 55; Colonial Papers, 1675–1676, 248, 298. Among the Winder Papers are certain undated observations on the heads of this proposed charter, which doubtless emanated from an English lawyer. He objected to even the temporary incorporation of Virginia, because it would incline the people there to imitate New England; a body of feoffees, he said, could be established by act of assembly and empowered to buy up the quit rents and escheats which had been granted to the proprietors of the Northern neck. Though opposed to cutting provinces up into small proprieties, the writer thought it would be a bad precedent for the king to deprive himself of this power. If a salary from the province was to be settled on the governor, it must be done now, "for hereafter," he said, "you will have concessions but not sacrifice."

[2] Colonial Papers, 1675–1676, 447. Printed in Burk, II. App. 61.

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Another subject which occasioned much anxiety in Virginia during the period of the Restoration was that of coast defence. It was closely connected with the interests of trade, as well as with the internal peace and prosperity of the province. Adequate provision for this need was made especially difficult by the number and breadth of the rivers, and by the accessibility of the bay as well. The very contour of the coast, though it was favorable for traffic, exposed the province also to the descents of an enemy. The entrance to the James river is a broad estuary, which the small ordnance then available in the colonies — or elsewhere in fact — was quite too weak to protect. Material for building forts of any strength was not available near its mouth, and could be transported thither only with considerable expense. Proper site also for a fort there was none. Of these facts the officials of the colony had long been aware, though from an early time efforts had been made to keep up a small fort at Point Comfort. In 1630 Captain Samuel Mathews undertook the building of a fort there, and a committee was appointed by the assembly, to view the ground. Ten years later the structure had to be rebuilt.[1] Governor Berkeley reported, years after, that, when he came into the country, he found "one only ruinated fort, with eight great guns, most unserviceable, and all dismounted but four, situated in a most unhealthy place, and where, if our enemy knew the soundings, he could keep out of the danger of the best guns in Europe."[2]

When the Dutch war began, in 1665, royal orders were sent to Virginia to provide for defence, and the assembly authorized the building of a fort, appropriating 80,000 pounds of tobacco for the purpose and empowering the governor to select a site. Jamestown was chosen and a fort was there begun, on which it was intended to mount the fourteen guns which were then in the province. There, it was said, sufficient men could be procured for a garrison, ships could lie safely under its protection, and timely warning could be given of the approach of an enemy. But the merchants from Bristol procured from the king an order

[1] Hening, I. 150, 226 [2] *Ibid.* II. 513.

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that Point Comfort should be fortified. Thirty small cannon were sent over, but most of these were lost in the ship that brought them; and beyond that no assistance was given by the home government. "But the reversing our first Councills," wrote Secretary Ludwell, "and rendering our preparations and first Charges for a ffort at James Towne uselesse by his Majesties second Commands doth very much trouble ye minds of ye people because they find their hopes of a ffort at James Towne frustrated and much of their money paid in vaine, a thing they seldom parte with willingly, how just or necessary soever ye occasion bee." So utterly defenceless was the province that every Dutch privateer which arrived threw the people into an agony of fear. Ludwell therefore begged that one or two frigates might be stationed there, and that, in deciding upon such matters of policy as the locating of forts, greater weight might be given in England to the opinions of the colonial authorities.[1]

But the Virginia government continued its efforts to obey the king's commands. "Wee have ordred," wrote Ludwell to Clarendon in February, 1667,[2] "a fleet, of boates and shallops mannd and armed to be reddy in every river of this colony to oppose such attempts when they shal bee made; but for the fort att the mouth of James River, wee having struggled with many difficulties, looseing several men & much materialls by stormes which broke our rafts in floting the timber to the place, which admitts of noe other way of fortifycation, being a loose sandy foundation. Wee are allmost in despair of perfecting it in that place, which would have been done with more ease att James towne and more effectuall. Wee have been allreddy att seaventy thousand pounds of tobacco charge to effect it at Poynt Comfort, and much of it yett undone."

When, therefore, the Dutch first appeared in force, in 1667, the merchant vessels which were anchored in the river fell an easy prey. The losses then suffered kept many of

[1] Ludwell to Clarendon, July 18, 1666; Colls. N. Y. Hist. Soc. Fund Series, 1869, 122; Ludwell to Arlington, Sept. 17, 1666, Winder Papers, Va. State Library; Hening, II. 220.

[2] Coll. N. Y. Hist. Soc. Fund Series, 1869, 160.

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the merchants away the following winter. This reduced the demand for tobacco and confirmed the colonies in the policy of cessation from planting of that staple which they had already adopted for 1667. But this was a radical measure, which showed that the industrial system of the provinces concerned was in an unnatural state. A spirit of uncertainty, with accompanying losses, prevailed, the effects of which were not soon to be forgotten.[1] The controversy over the question of locating a fort at Point Comfort was revived, the governor, Secretary Ludwell, and the members of the council reiterating their belief that such a course would be futile, and the merchants, especially those from Bristol, insisting that the mouth of the river should be the site of the chief fort. That the judgment of the Virginia officials was correct is now evident; and it was in agreement with the experience of the Dutch at Manhattan[2] and of others at similar points on the coast. The assembly was aroused to pass, in September, 1667, a comprehensive act for the building of one fort on each of the rivers of the province, the Nansemond, the James, the York, the Rappahannock, and the Potomac, the one on the James to be located at Jamestown,[3] though the localities chosen on the other rivers were much nearer their mouths. In the preamble of this act the assembly added its testimony to the expressions of opinion which had already come from the officials of the province, that "to build a fort at Point Comfort would produce little to the ends proposed, because seated in a place where is almost an equal difficulty of procuring materials to erect it and of men to guard it and defend it when built, besides a ship or ships coming in with a ffaire wind and tide . . ., with the hazard of one or two shotts have as much liberty to prey upon ships or country as if there was noe fort there, . . ." The cost of building the five forts was imposed on the counties which were located in their neighborhood. When, in 1670, Berkeley made his report to the king, these forts were still in existence, but, said the governor, "God knows we have neither skill or ability to make or

[1] Winder Papers, already cited. Also Va. Mag. of Hist. IV. 230–245.
[2] See Vol. II. of this work, p. 391. [3] Hening, II. 255.

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maintain them ; for there is not, nor, as far as my enquiry can reach, ever was one ingenier in the country, so that we are at continual charge to repair unskilful and inartificial building of that nature. There is not above thirty great and serviceable guns ; this we yearly supply with powder and shot as far as our utmost abilities will permit us." The merchants contributed nothing toward defence except the payment of port duties, which in 1667 amounted to about £300 [1] per year — altogether inadequate to the maintenance of the forts. The cost fell chiefly on the province, and still the result, as shown by the second disaster in 1672, was without practical value. The governor and council then wrote that the cost of such a fort as would even approximately serve the purpose at Point Comfort would be £15,000 sterling. It must be furnished with forty or fifty demi-cannon or culverin. But the revenue of Virginia, they continued, amounted to only £2200 sterling per year, of which the governor received £1200, the councillors £200 and the rest was expended for necessary purposes. The existing port duties were not sufficient to pay the gunner, furnish powder, and keep up repairs. The province could not bear the cost, and even if the king should build it, they could not support the garrison without levying duties on those who traded to and from Virginia to pay it. Still, however, the merchants kept up the clamor for a fort at Point Comfort ; and in 1673 soundings were made there by a joint committee consisting of captains and of one man from the province, the former apparently hoping to show that the channel at the Point was so shallow that men of war could not approach near enough to harm vessels which lay near the shore. But the inquiry did not convince the provincial authorities, for, at the same time the contractors for repairing and extending the fort at Jamestown were being ordered to proceed with their work.[2] It thus appears that the Virginia government was ineffectually trying, as other colonial governments were doing, to provide for river and harbor

[1] Winder Papers.

[2] Copies of Ancient Records, Va. Hist. Soc. One of the contractors was apparently William Drummond.

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defence. Revenue was being spent, but no desirable result followed. Under the conditions and with the methods which then existed, the problem was insoluble. The issue, however, was one well fitted to be raised when the general policy of the Berkeley régime was assailed, and the question, what was being done with the public funds, came to be urged with emphasis.[1]

As early as 1674 the upper counties began to show restiveness on this and other subjects. A reference to an attempted uprising there in that year has been preserved, but of its details[2] we know nothing. We only know that complaint was made of the justices' levies, of the large grants made to the governor and council, and of the cost occasioned by sessions of the assemblies. A proclamation from the governor, supported by the influence of "some discreet persons," proved sufficient to quiet the disturbance at that time. In April, 1676, Berkeley wrote to Ludwell that the previous year he had quieted two mutinies which had been raised by "some secret villains," who had reported that nothing was intended by the £50 levy but the enriching of some few people. Though it had since been paid without protest, he feared the effect of any increased taxation.[3]

But the social and political conditions in Virginia would probably not of themselves have caused the insurrection of 1676. The spark was ignited by an Indian war, and by the suffering among the frontier settlements which it occasioned. The policy of Virginia toward the Indians did not materially differ from that which was followed by the other colonies. After the plans which both company and planters had held concerning the possibility of civilizing the natives had been shattered by the massacre of 1622, severe and prohibitive measures concerning trade and intercourse with them were adopted. Though these were at times relaxed, the people

[1] The echoes of this controversy appear in the grievances of many of the counties after Bacon's rebellion, they assailing the government because so much revenue had been expended on the forts without any result becoming visible.

[2] Winder Papers; an account of the state of Virginia, which was received in England in June, 1676. It does not appear in the calendar.

[3] *Ibid.*

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of Virginia never returned to the free and unregulated intercourse with the Indians which had existed in the earlier days. Only a few references appear during the remainder of the century to the desirability or possibility of attempting to civilize the natives.

At times, when the Indians were restive and wars seemed approaching, trade with them was partially or wholly suspended. This was done in 1624, 1632, and 1643. In 1624 all houses were ordered to be palisaded as a means of defence against them, and the colonists were commanded to carry arms with them as they went into the fields to work.[1] This provision was also embodied in a law of 1632, while at that date the settlers, except on the Eastern Shore, were forbidden to parley with the Indians.[2] In all parts of the province they were forbidden to enter the villages of the Indians. By acts passed between 1655 and 1665 the entertaining of Indians without license of justices of the county court was forbidden.[3] They were not to come within fenced plantations without a ticket or badge. The customary prohibition of the sale of arms and ammunition to them appear until 1659. Then it was enacted that, inasmuch as the neighboring colonies, both English and Dutch, supplied them freely and by this means drew away the beaver trade, Virginians should be permitted to trade freely with the natives in arms, powder, and shot. Not until the beginning of the Indian war in 1676 was the former prohibition renewed. Although in 1662 the system of regulating the Indian trade by licenses granted by the governor was permanently established, it is not probable that traffic in arms was stopped. Berkeley became deeply interested in the Indian trade, and it cannot be doubted that licenses were liberally granted whenever they seemed likely to result in gain to[4] the governor and his official friends.

In Virginia, as elsewhere, legislation concerning the Indians after about the middle of the century became more comprehensive, and features of the protectorate appear. In

[1] Hening, I. 127.
[2] *Ibid.* 167, 173, 192, 198.
[3] *Ibid.* 410, 415, 441, 471, 525; II, 142, 219.
[4] *Ibid.* II. 20, 140, 336.

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Virginia this tendency appeared after the war of 1644 and the death of Opechancanough. In 1646 a treaty was made with Necotowance,[1] his successor, in which the natives agreed to withdraw entirely from the land between the York and James rivers, the Falls, and Kicoughtan, and settle north of the York river; they also acknowledged the supremacy of the king of England and promised him tribute; the bounds of the Indians' hunting grounds were specified, and intercourse between them and the English was carefully regulated. In 1653 the assembly provided for the assignment by the local authorities on York river and in Gloucester and Lancaster counties of land for permanent occupation by certain Indians. By an act of 1656[2] it was declared that the Indians should not alienate any of the lands which they possessed under orders of the assembly. In future such bargains and sales, to be valid, must have the assent of the assembly. By another act, passed later in the same year,[3] the English undertook to investigate and settle disputes between Indians and the whites, and to mete out the penalty which the former should suffer for trespass and other more serious offences. In 1658 the Indians resident within the province were by law permitted to retain the lands on which they were seated, in the proportion of fifty acres for each warrior, and the land belonging to each Indian town was to be surveyed and laid out for them, with liberty of waste and unfenced land for hunting.[4] Those who in the future needed to remove to vacant lands, should be assisted in doing so. No one should settle on land claimed by them, without permission from the governor and council or justices of the peace. Indians, on the other hand, should not sell those lands except in the quarter courts. Within the next two or three years the principle of this law was applied in Accomac and in a number of the counties on the west side[5] of the bay. But owing to failures in administration, to violent and fraudulent intrusion of whites upon the lands of the Indians, and

[1] Hening, I. 323.

[2] *Ibid.* I. 380, 382, 396; Va. Mag. of Hist. VIII. 173; W. & M. Coll. Quarterly, IV. 178.

[3] Hening, I. 415.

[4] *Ibid.* 457, 467.

[5] *Ibid.* II. 13, 14, 34–39.

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to reprisals, it became necessary in 1662 to reaffirm the principles of the law, and to give the governor authority to appoint commissioners to annually view and fix the boundaries of Indian lands. Purchase and sale of their lands[1] was forbidden. Shortly after the legislature went so far as to forbid the tribes of the province to select their chiefs and to provide that they should be appointed by the governor. If the natives should refuse to acknowledge such appointees, they should be proceeded against as rebels. It thus appears that Virginia by 1675 had committed herself to the policy of forming Indian reservations, and that the government had assumed the right to thoroughly regulate the relations between natives and the whites throughout the settled parts of the province. Had the Indians of Virginia been left undisturbed by outsiders, the statement made by Governor Berkeley in 1671, "The Indians, our neighbours, are absolutely subjected, so that there is no fear of them," might have proved true.[2]

The long period of peace between the Indians of Virginia and the whites was broken in the summer of 1675 by the murder of one of the settlers of Stafford county[3] by a band of the Algonkin tribe of Indians known as Doegs, who lived partly or wholly in Maryland. The militia of the county was at once called out under Colonel Mason and Captain Brent, and the Indians were pursued with some slaughter up the river and into Maryland. There a few Susquehannas, who as a tribe by pressure from the Iroquois were being forced southward toward the Potomac, were slain. Outrages by the Indians then followed on both sides of the river, in the course of which some of the Susquehannas took possession of an old fort in Maryland near the frontier. This led, in the autumn of 1675, to a joint expedition from Maryland and Virginia, the troops of the former under Major

[1] Hening, II. 138, 219.

[2] Neill, Virginia Carolorum, 332.

[3] W. and M. Coll. Quarterly, II. 38; IV. 86; Narrative of Bacon's Rebellion, being the report of the Royal Commissioners of 1677, in Va. Mag. of Hist. IV. 117; The Beginning, Progress, and Conclusion of Bacon's Rebellion in Virginia, by T. M., in Force, Tracts I.

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Thomas Truman[1] and those of the latter under Colonel John Washington. They besieged the fort. At the beginning of the siege or perhaps even before, five Susquehanna chiefs came out of the fort to parley, and, when they were charged with having been concerned in the recent outrages, denied it all, and said the mischief had been done by the Senecas. After the improbability of this, as it was claimed, had been shown to them, they were taken away by the Maryland commander and put to death. For this gross violation of good faith he was later impeached by the Maryland assembly, but escaped with a light punishment.

The slaughter of the Susquehanna chiefs was soon followed by a war of revenge in which the injured tribe and its allies, early in January 1676, carried destruction through the settlements of the Northern neck. The aged governor, with the advice of the council, ordered out a competent force of horse and foot under Sir Henry Chicheley; but when they were ready to march, he changed his mind and caused the men to be disbanded. All that the governor could be brought to think of was the construction of a chain of small forts along the border. Though this work was undertaken, its uselessness was clearly seen from the outset. After the outrages had continued for several weeks longer and the Indians had penetrated to the upper and middle course of the James river, Berkeley replied to the appeals for help that nothing could be done until the regular meeting of the assembly in March. In view of this apathy it is not strange that the sufferers became almost frenzied, and that an old charge was revived and urged with redoubled earnestness, that Berkeley was sparing the Indians for the sake of their trade.

When, in March, 1676, the Long Assembly met for the last time,[2] nearly 300 persons had perished at the hands of the natives. It declared war against the Indians and ordered the impressment of five hundred men. But no effective use was made of this force, for it was assigned to garrison duty in the forts to the building of which Berkeley was so fully com-

[1] Md. Arch., Proceedings of Assembly, 1666–1676, 475, and at intervals to the close of the volume. *Ibid.* Proceedings of Council, 1671–1681, 48.

[2] Hening, II. 326.

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mitted. This convinced many of the sufferers in the upper counties that no effective measures were to be taken for their protection, and therefore they began to devise means for local self-defence.

Charles City county was the first to beat up volunteers, using the prime necessity for self-defence, for the protection of the lives and property of its inhabitants, as a justification. The people of this county, and others who followed their example, expressly disclaimed any rebellious or treasonable intent. Grievances they had, which had their origin in what was believed to be the long-continued misgovernment of the province. But these they now put aside, and as one party said, devoted their persons and fortunes freely to the redemption of their country, and became both the actors and the paymasters in this necessary defensive war. They regarded their conduct also as peculiarly adapted to the conditions of the frontier and to the methods of Indian warfare. Under such conditions local and personal initiative were most in demand.[1] Though it would be unreasonable to suppose that all those who now flocked to arms were moved by a reasoned view of the situation, it is clear that the time had come when the people must assume responsibility for their own defence. In its earliest phase, this uprising was not a rebellion at all, but a necessary measure of self-defence.

When the men of Charles City county and their neighbors looked about for a leader, they found him in the person of young Nathaniel Bacon, a man whose passions had been aroused by the suffering which he saw around him. About fourteen months before the beginning of the Indian war, Bacon, accompanied by his young wife, who was of the Suffolk gentry, had removed to Virginia. His ancestors were kinsmen of Lord Bacon. His father's cousin, Nathaniel Bacon, of Kings Creek, in York county, had been a resident in the province for about fifteen years. The elder Bacon was a member of the council and a man of wealth and influ-

[1] See various declarations of those who shared in these events, and of Nathaniel Bacon himself, in Egerton Mss., copies of which are in both the Va. State Library and the Library of Congress. The same is also clearly stated in Charles City County Grievances, Va. Mag. of Hist. III. 137.

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ence.[1] The younger Bacon bought two estates on the James river, one at Curl's wharf and the other above at the Falls. The position which he was expected to take in Virginia is indicated by the fact that he was almost immediately appointed a member of the council.

Bacon had studied law and had travelled on the continent of Europe. By nature he was intense and passionate, quick to resent injury and wrong. The royal commissioners, influenced, it must be believed, largely by unfavorable representations, described him as a man of "an ominous, pensive,[2] melancholy Aspect, of a pestilent and prevalent Logical discourse tending to atheisme, in most companyes not given to much talke, or to make suddain replyes, of a most imperious and dangerous hidden Pride of heart, dispising the wisest of his neighbors for their Ignorance, and very ambitious and arrogant." This implies that Bacon was not an admirer of Berkeley and that from the first he found much in the political and social system of Virginia to criticise. He did not fit easily into the routine of official life. His arrival added an element of unrest to the many which, from a variety of causes, were accumulating in Virginia. The Scotchman, William Drummond, who had been governor of Albemarle, and Richard Lawrence, an Oxford graduate, both of whom were prominent residents of Jamestown, sympathized with the attitude which Bacon was inclined to assume, though this as yet by no means implied rebellion.[3]

When Bacon witnessed the destruction that was being wrought on the frontier, and had lost a servant on one of his plantations, and when he saw the distracted people crowding toward the interior plantations, his ardent sympathies were fully aroused. He felt also that his position as councillor imposed upon him the obligation to do what he could for the protection of his neighbors. "I sent," he writes,[4] "to ye

[1] Neill, Virginia Carolorum, 243, 345; W. & M. Coll. Quarterly, X. 267.

[2] Va. Mag. of Hist. IV. 122.

[3] The Beginning, Progress, and Conclusion of Bacon's Rebellion, by T. M., Force, Tracts, I. The author is supposed to have been Thomas Mathews, son of Samuel Mathews, and a resident of Northumberland county.

[4] Bacon's statement, of June 18, 1676, W. & M. Coll. Quarterly, IX. 7.

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Govern[r] for a commission to fall upon y[m] but being from time to time denied, and finding yt ye country was basely for a small and sordid gaine betraid, & ye lives and fortunes of ye poor inhabitants wretchedly sacrificed, resolved to stand up in this ruinous gap & rath[r] expose my life and fortune to all hazards, than basely desert my post. . . ." Bacon was therefore as ready to lead the frontiersmen, from Charles City county and above, as they were to have him.[1] He soon found himself at the head of a force which was said to number about three hundred.[2] With these, as the Susquehannas were in close relations with the Occaneechees, who lived on the Roanoke river and sold them ammunition, Bacon marched southward a hundred miles or more, till he met a body of the enemy and inflicted upon them a severe defeat.[3]

Governor Berkeley, in the meantime, issued a series of proclamations in condemnation of Bacon's enterprise and accompanied with commands for him to return. In the first of these the governor promised him pardon; but because that offer was ignored, or not received, in the second Berkeley denounced him as a rebel and declared him suspended from the council, from his office as justice of the peace, and from all power civil and military.[4] But as he advanced with a troop of horse up the courses of the York and James, with a view to Bacon's arrest, the governor found the spirit of opposition so strong that it was necessary to dissolve the Long Assembly and order a new election. By this act the crust of official privilege which for sixteen years had been forming in Virginia was broken through, and a brief opportunity was given for the expres-

[1] Some from Isle of Wight county also joined him. Va. Mag. of Hist. II. 381.

[2] So stated by Philip Ludwell in his letters of June 28 to Secretary Williamson, Va. Mag. of Hist. I. 180. Bacon says that only seventy stood by him when the fight with the Indians came. W. and M. Coll. Quart. IX. 7.

[3] An account of this expedition, written presumably by one of Bacon's soldiers, and Bacon's own account, both from the Egerton Mss., are printed in W. & M. Coll. Quarterly, IX. 7. A somewhat different story is told by Philip Ludwell in the letter just referred to, but Ludwell, besides being an opponent of Bacon, was not an eye-witness.

[4] This proclamation, dated May 16, 1675, is among the Egerton Mss., Va. State Library and Library of Congress.

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sion of opinions which were not shared by the official circle. The law, however, still required that the new assembly should be elected by householders and freeholders.

Berkeley, in connection with the issue of the call for the new assembly, published a third declaration[1] explaining why he was justified in proceeding against Bacon as a rebel and traitor. Bacon, he said, had taken up arms without authority from the government and notwithstanding its prohibitions; and though he had done it in the service of the king and from patriotic motives, such an act was treason. Such, he said, was the law of England, and any peer who should commit the offence would suffer for it. Such an act, he continued, was certain in the end to be ruinous to both government and people. "The swearing[2] of men to live and die together is treason by the very words of the law." He challenged Bacon to show a single case where such proceedings had been approved, but on the other hand a hundred examples could be cited of great and brave men who had been put to death for gaining victories against the command of their superiors. Bacon, on the other hand, affirmed his innocence of treasonable intent and his willingness to have served under the governor, if the latter had taken the command.[3] Inasmuch as the actual encounter with the enemy had occurred after Bacon had received the order to return, something might be said in support of the governor's contention. But Bacon's offence certainly did not come under the law of treason and under the circumstances did not involve rebellion, though it might possibly have been described by the old term, "accroaching royal power." Berkeley declared that he was waiting to ascertain who the hostile Indians actually were, so as not to strike the settlements of friends. But in view of the fact that nearly ten months had passed since the raids began, this statement was absurd. It was a time when, if ever, the rights of humanity should triumph over the formal legal claims of a governor grown

[1] Neill, *op. cit.* 351. The date was May 29.

[2] The men whom Bacon led against the Indians took an oath of service.

[3] See letter of Bacon, dated May 25, written apparently in reply to Berkeley's second proclamation, Egerton Mss.

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despotic with age and with the adulation which he had long received from a coterie of officials. Had Schuyler at Albany or Pynchon at Springfield taken the initiative under such conditions, and that too without waiting ten months for action, we can scarcely imagine that it would have been met with the charge of treason. CHAP. VIII.

The popularity of Bacon in the upper settlements was sufficient to insure his election to the assembly from Henrico, for which the way had been opened by his suspension from the council.[1] Owing to fears for his safety when he should reach Jamestown, an armed force of thirty to fifty men accompanied him to the capital. This gave to his demonstration a more serious aspect, indicating, as it did, an intention to overawe the assembly. Therefore, as his sloop approached Jamestown, it was fired upon. Bacon, however, landed and had an interview with Drummond and Lawrence. Finding apparently that he could not with safety attend the assembly, he attempted to return up the river. Then, under order from Berkeley, he was pursued by Captain Thomas Gardner in the ship *Adam and Eve*, which was lying at Jamestown, and captured.[2]

When Bacon was brought before the governor, he was immediately released on parole. He took up his abode at the house of Lawrence, who kept an ordinary, and with whose coöperation he was doubtless acting. His relative, the councillor Bacon, perhaps as the result of an understanding with the governor, now interposed and with difficulty prevailed upon his high-spirited nephew to read an acknowledgment of his offence and a request for pardon.[3] The paper being drawn for him, Bacon consented, and the next day the ceremony was duly performed before the governor and in the presence of the two houses of the legislature. The acknowledgment closed with a solemn promise that,

[1] The Beginning, etc., of Bacon's Rebellion, by T. M., 13.

[2] Va. Mag. of Hist. IV. 127; Colonial Papers, 1677-1680, 192, 195. The sympathy of the assembly with Bacon at this time, besides their regard for their privilege, is shown by the fact that they fined Captain Gardner £70 and imprisoned him till he should pay it.

[3] T. M., 12, 15. The acknowledgment is in Hening, II. 543, and in Neill, 358.

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upon the grant of pardon, Bacon would always bear true faith and allegiance to the king and conduct himself dutifully and peaceably toward the government of Virginia. The governor thereupon declared that he forgave him, and Bacon, with his associates, was released. Bacon himself was soon found sitting with the council, the supposition being that Berkeley desired by all means to keep him out of the assembly.

Though the evidence is clear[1] that the two houses of the new general assembly sat apart, the governor and council were naturally anxious to so control the proceedings of the burgesses as to prevent the passage of reform measures. The burgesses were desired to confine their attention to Indian affairs and defence. But some of the members at once addressed themselves to the work of reform, and a committee had been partly named to inspect revenues, accounts, and Indian affairs. One of the governor's friends in the house then moved that he be asked to permit two of the councillors to sit with and assist them in debates, as had been usual. The member from Stafford objected to giving the council any trouble until the house itself had formulated its views. At this there was an uproar, the friends of Berkeley urging that the presence of councillors had been customary and ought not to be omitted. An old member, named Presly, then arose and said, "'Tis true, it has been customary, but if we have any bad customs amongst us, we are come here to mend 'em." This occasioned a general laugh. But the original proposal was carried, and the custom of admitting the councillors was followed as of old.

The character and amount of the legislation which was passed shows that the majority of the assembly trusted Bacon as an Indian fighter and was resolved to check some of the oligarchic tendencies in the government. An elaborate act for the prosecution of war against the Indians was passed, and Bacon was designated in it as the commander-in-chief of the force to be raised. They were to number one thousand men. The assembly readmitted freemen to the full right of

[1] See the pamphlet of T. M., who was a member.

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suffrage by repealing the act of 1670, making special provision also against the issue of false election returns. It provided for the periodical election of vestrymen by the freeholders and freemen of the parishes. It enacted that representatives of the people should coöperate with the justices in levying taxes and making by-laws for the counties. It repealed the act exempting councillors and ministers from taxation, and enacted instead that the salaries of the councillors should be increased and that only clergymen in person, and not the members of their families, should be exempt from the levies. It provided that the county courts should appoint the collectors of county levies, and that no councillor should sit or vote with the county justices. A period of time was fixed within which the sheriffs must collect the public dues. Acts were also passed against the taking of illegal fees and the unlawful extension of terms of office. There is, however, no evidence to prove that Bacon was the leader in the passage of these measures. His name is not prominently mentioned in connection with them by any of the chroniclers of events, though most of the writers were in sympathy with the efforts that were making to break the power of the official oligarchy. Among the grievances which were later submitted by Gloucester county occurs the significant statement, that "many good Lawes were consented to by that Assembly [of June, 1676] before the Rebell Bacon came and interrupted the same."[1]

Before the work of the assembly was done, Bacon seems to have been seized with a fear that Berkeley after all intended his ruin. He came not unnaturally to the belief that the governor's reconciliation with him was not genuine, but only a pretence, in order that he might the more effectually entrap him.[2] This may have been a true interpretation of Berkeley's conduct. At any rate, Bacon seems to have been confirmed in his belief of it by the fact that, after he had been made general of the forces by act of assembly, the governor still withheld his commission. Bacon saw through the plot, if there

[1] Va. Mag. of Hist. II. 167.

[2] See the pamphlet of T. M. 15; Va. Mag. of Hist. IV. 129.

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was any, and, on the plea that he must visit his sick wife, left Jamestown and proceeded up the river. There among his supporters he quickly raised a force of about five hundred men [1] and marched back to the capital, with the purpose of securing a commission which would make him commander of all the troops of the province against the Indians. This proved to be a turning point in the progress of affairs and events now rapidly drifted toward rebellion. Bacon becomes clearly the leader of a movement which is directed against the governor and his supporters throughout the province.

Jamestown, as usual, was found defenceless.[2] Bacon entered the town and drew up his men near the building where the legislature was sitting. The burgesses flocked to the windows, while the inhabitants had been brought together by the alarm, to see what was going to happen. The governor, in his helplessness, could only follow a policy of delay. He first sent certain councillors to learn Bacon's demands. Bacon insisted upon the commission. The one that was first brought him was not sufficiently broad in its terms; it only gave him authority to lead the volunteer forces of the province against the Indians, while he desired the command of all the forces for the war. The governor then went out to meet the insurgent leader in person, and, according to one account, struck a melodramatic pose and dared Bacon to shoot him on the spot. According to other accounts he proposed that himself and Bacon should settle the question by compromise. Both of these offers were declined. After the governor had retired, Bacon in a fit of real or assumed passion, it is hard to tell which, threatened [3] to fire on the legislature. His object in this seems to have been to bring the burgesses to his assistance in a joint move for the purpose of compelling the governor to grant the commission in the desired form. It was at any rate successful, and though the assembly declared its own inability to

[1] The author of the Burwell Ms. says 500. Sherwood, Va. Mag. of Hist. I. 171, says at least 520.

[2] The Burwell Ms. 12, in Force, I.; Va. Mag. of Hist. I. 183.

[3] This is confirmed by the account of T. M., 17, and also by those of Sherwood, Ludwell, and the Commissioners, Va. Mag. of Hist. I. 173, 184; IV. 130.

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issue the document, its influence was used to compel the governor to submit. Not only was power satisfactory in extent bestowed on Bacon, but blank commissions for officers were given to him to be filled out and issued by himself at discretion.[1] The assembly then passed[2] an act of pardon for all crimes which had been committed between March 1 and June 25, except violations of the law against trading with the Indians. A report was also sent to the king, approving Bacon's conduct. The extent of Berkeley's humiliation is indicated by the fact that he signed it, along with the officers of the assembly. At the same time, however, accounts by Berkeley himself and other members of his party were also despatched, giving their view of the case. On report of further outrages by the natives, the assembly was now dissolved, and Bacon with an augmented force marched to the Falls of the James to prepare for his second expedition against the Indians.

But now that the reforming assembly had been dissolved and Bacon with his men was likely to be occupied with the Indians, Berkeley resolved, if possible, to raise the lower parts of the province against him. With this and the counter moves which it occasioned, the event resolves itself clearly into a struggle between the government and a rebellious faction. Bacon and his men still did some fighting against the Indians. In this they were successful, and punished the clans on the York and Chickahominy rivers with severity.[3] The Indian war soon abated, and interest then centred exclusively in the struggle between the governor and Bacon.

As soon as Bacon had withdrawn from Jamestown, in July, 1676, Berkeley again proclaimed him a rebel, and attempted to call out the militia of Gloucester and Middlesex counties against him. But he found that he had been mistaken in counting upon their loyalty, for they refused to serve against him who was defending the province against

[1] T. M., 19; Va. Mag. of Hist. IV. 130.

[2] Hening, II. 363.

[3] See Narrative of Commissioners, Va. Mag. of Hist. IV. 137; Burk, II. 175.

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the savages. If, however, after the Indian war was over, Bacon should attempt anything against the governor's office or person, they declared that they would come to the support of the legal authorities.[1] Bitterly disappointed by this reception in one of the richest and most populous districts, Berkeley, after launching another proclamation against Bacon, with such arms and ammunition as he could collect retired across the bay to Accomac.

The ambiguous position in which Bacon was placed by the governor's opposition to his self-assumed leadership in the Indian war is reflected in the steps which he took at the Falls. Before setting out thence to find the Indians he and his soldiers took the oaths of allegiance and supremacy, intending thereby to prove their loyalty to the king. But at the same time Bacon required his soldiers to swear to him an oath of fidelity, that they would reveal any plot or intention of harm against him as their commander. The object of this was to hold the men together against any attack by the governor and his party.[2]

No sooner had these steps been taken than news came of the attempt of Berkeley to raise Gloucester county and his renewed proclamation of Bacon as a traitor. Bacon, after a spirited address[3] to his men, led them thither. But finding the governor already departed for Accomac, Bacon went to Middle Plantation, afterwards Williamsburg, where he issued an eloquent defence of his cause, and an arraignment of the governor and council under the title of "The Declaration of the People."[4]

In this document Bacon vented his dislike of the official clique in the following vigorous language: "Wee appeale to the Country itselfe what and of what nature their Oppressions have bin or by what Caball and mistery the designes of many of those whom wee call great men have bin transacted and caryed on, but let us trace these men in Author-

[1] Burwell Ms. 13, in Force, I.
[2] Va. Mag. of Hist. IV. 131.
[3] *Ibid.* 132.
[4] *Ibid.* I. 55–63. Another, but different, copy of the Declaration alone is in Neill, 361. The contents are loosely outlined in the Burwell Ms., 15.

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ity and Favour to whose hands the dispensation of the Countries wealth has been comitted; let us observe the sudden Rise of their Estates compared with the Quality in which they first entered this Country Or the Reputation they have held amongst wise and discerning men, And lett us see wither their extractions and Education have not bin vile, And by what pretence of learning and vertue they could soe soon [rise] into Imployments of so great Trust and consequence, let us consider their sudden advancement and let us also consider wither any Publick work for our safety and defence or for the Advancment and propogation of Trade, liberall Arts or sciences is here Extant in any [way] adequate to our vast chardg, now let us compare these things togither and see what Spounges have suckt up the Publique Treasure and wither it hath not bin privately contrived away by unworthy Favourites and juggling Parasites whose tottering Fortunes have bin repaired and supported at the Publique chardg, now if it be so Judg what greater giult can bee then to offer to pry into these and to unriddle the misterious wiles of a powerful Cabal let all people Judge what can be of more dangerous Import than to suspect the soe long Safe proceedings of Some of our Grandees and wither People may with safety open their Eyes in soe nice a Concerne."

In a latter part of the manifesto the complaints which had long been urged, though to an extent falsely, against Berkeley's government were stated in a formal series of charges. It was declared that he had levied unjust taxes in pretence of carrying out public works, and spent the revenue thus obtained upon favorites and for "other sinister ends." He had not improved the means of defence, the towns, or the trade of the colony. He had brought the courts of justice into disrepute by promoting scandalous and ignorant favorites to the magistracy. By monopolizing the beaver trade he had wronged the king and betrayed or sold the lives of many loyal subjects to the Indians. The favoritism he had shown toward the Indians since the beginning of the war had been unwarranted and had brought upon the people of the colony the most terrible sufferings. Finally,

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Bacon condemned the governor's conduct toward himself and his followers, called him and nearly all the members of his council to account therefor, and declared them traitors to king and country, to be proceeded against by all loyal people and, if possible, captured.

In connection with the issue of this "Declaration," Bacon, in August, called a convention of the gentlemen and inhabitants of Virginia to meet at Middle Plantation. To this body, which was numerously attended, he submitted a form of oath[1] that he desired to have taken by all his supporters. It was distinct from the oath which he had already administered to his soldiers, and was specially intended for his political allies. It contained not only a promise to assist Bacon, but an acknowledgment that all his acts had been legal, while the conduct of the governor and council had been illegal and ruinous to the country. But the clause which staggered those who were asked to take the oath was one which contained a promise to oppose any forces that might be sent from England until such time as Bacon might have acquainted the king with the state of the province and have received an answer. This involved the possibility of a direct breach of the oath of allegiance, and brought the thought of the penalties of treason home to the minds of many. Strong opposition was made in the convention to this clause of the oath, and we are told that all of Bacon's appeals that it should be included proved vain until news came that Berkeley, on his way to Accomac, had dismantled York fort to secure arms for his vessel, and had thus left the coast defenceless. Bacon, then consenting to a proviso, that no subscriber should be bound by anything which was inconsistent with his allegiance, the oath was taken and the entire declaration was ratified. They were then sent to the counties to be accepted as a sort of provincial covenant, but it is said that the oath as there administered by the justices of the peace did not contain the proviso upon which those who were in attendance on the convention had insisted. The lengths to which Bacon was now prepared to go are

[1] Va. Mag. of Hist. IV. 135; Burwell Ms. 17–19.

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further shown by the fact that he issued a call for an assembly, which was also signed by four of the council.

Owing to the fact that Virginia was a royal province, the uprising now began to assume some of the features of a colonial revolt. Not only was Bacon taking the offensive against the governor, but he seemed ready to risk an encounter with royal forces, should they be sent to Virginia for the support of the government. A conversation between Bacon and one John Good has been reported which, whether or not it ever occurred in the form that has been transmitted, sets forth ideas which may well have been floating at that time in the fertile mind of the insurgent leader. Bacon is represented as being aware of the possibility that the king might send two thousand redcoats against him; but he was confident that with their superior knowledge of the country and of the methods of warfare which were adapted to it, two hundred Virginians might beat them. The suggestion was made that the Virginians might be left helpless if they were cut off from English supplies, and that under this pressure and that which they would suffer from the ravages of a body of royal troops, they might hasten to make their peace with the king. In reply to this Bacon expressed confidence that France and the Dutch would open trade with them, while Maryland and Carolina would renounce their governors and join in the common revolt of the Southern provinces. "Why," said Bacon smiling, "have not many princes lost their dominions so?" "The governors of Carolina," he continued, "have taken no notice of the people, nor the people of them, a long time, and the people are resolved to own their governor no further." We are already aware of the sympathetic movement which was beginning in Maryland, while Good, the reporter of this conversation, states that after hearing Bacon's utterances about Carolina, he understood why the name of that province had been made the watchword for his troops.

Bacon was already fascinated by the dream of colonial revolt, and its indefinite possibilities. The plans which were to take shape a century later were already floating dimly before his mind. With the ideas and projects of that time

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he was even now, though prematurely, familiar. He professed to be ready to try the experiment and, if it should fail, to take refuge with his followers on some inaccessible island or in some recess of the wilderness beyond the reach of king or royal governor. To his mind Berkeley was the real traitor, and he himself the defender of the liberties of Virginians and of the justly ordered constitution of the province. As an illustration of the way in which abuses resulting from the monopolization of power, because they occurred in a royal province, might be followed by an effort to renounce allegiance to the king, Bacon's rebellion is the most significant event in the history of the colonies prior to 1760.

Though the mainland seemed as good as lost to him, Berkeley by special promises was able to gain a considerable support in Accomac, and while Bacon was engaged in his last operations against the Indians prepared to return to Jamestown. Bacon, as soon as he heard of the operations of the governor, sent a vessel under the command of Bland and Carver to seize the person of the governor and deport him to England, as had been done years before in the case of Harvey.[1] When the vessel arrived on the east shore, Berkeley invited Carver to visit his camp. During his absence Bland's vessel was seized by a body of the governor's men, and its commander and all the crew were made prisoners. When Carver returned, he too was taken and put in irons.

The governor now crossed to the mainland, with a force said to number about six hundred men.[2] But as the event proved, they must have been very poorly armed and a large part of them possibly bent on personal gain. The governor, however, is reported to have exacted from his followers at this time an oath to assist him against all who had

[1] Va. Mag. of Hist. IV. 136. This was the Giles Bland who had formerly quarrelled with the governor in reference to the enforcement of the acts of trade.

[2] Va. Mag. of Hist. IV. 141 *et seq.* In the Burwell Ms. the number is stated to have been one thousand. This makes the events which follow seem still more incredible.

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taken up arms, and later this was effectually used in the suppression of the revolt.[1] Approaching Jamestown, which was in the hands of the Baconists, he summoned it to surrender, promising pardon to all except Lawrence and Drummond. On these terms the governor was readily admitted into the town.

Bacon, meanwhile, after completing the discomfiture of the Indians, had disbanded all except about one hundred and fifty of his men. But with this body, which was soon increased to three hundred, he laid siege to Jamestown. Energy and resolution animated his men, while the governor's troops were guilty of gross cowardice. In attack as well as defence Berkeley's measures proved ineffective. Poor management and lack of spirit characterized the doings of his force, till finally, rather than face a general assault, the governor abandoned the town and retired down the river. Bacon entered the place and, hearing that a force under Colonel Brent was marching against him from the north, burned it to the ground.

Bacon then crossed the river into Gloucester county, and prepared to advance against Brent. But before his men were ready he learned that Brent's force, hearing of the evacuation of Jamestown by Berkeley, had broken camp and returned to their homes. Bacon then administered his oath of fidelity and support to many of the inhabitants of Gloucester county, and prepared to invade Accomac. As he was about to set out upon this enterprise he suddenly sickened and died — October 18, 1676 — the victim of privations in the Indian war and before Jamestown.

Whether, if Bacon had lived, he could have held his party together till the complete defeat of the governor had been assured, must always remain uncertain. No estimates have survived of the relative strength of the two factions. The sympathy with Bacon as an Indian fighter was very general. Correspondingly widespread was the dissatisfaction with the management of the government in recent years. A large component of the people seems to have been disposed to

[1] Winder Papers, Grievances of Nansemond county.

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regard Berkeley's distress with indifference, if not with joy. It is not improbable that they would have acquiesced in the forcible removal of the governor from the province. But that they would have followed Bacon into direct resistance to the will of the king is far from probable. There is no proof that Bacon really thought it would be necessary to take that step, though, had he survived, it would have been necessary for him to face the charge of treason.

With the removal of the person of the leader, the movement very soon began to collapse. Colonel Ingram assumed command, but he was wholly unable to continue aggressive operations. Bacon, since his return from the Indian campaign, had not been followed by a large force. Now even such of his supporters as were under arms broke up into small bands, which posted themselves at West Point, Green Spring, or Pate's house. Unity of action among them ceased, and they soon dispersed before the approach of the governor.[1]

Now it was that Berkeley's insane vindictiveness had full rein, and for a time there was no one to oppose. Unlike his contemporaries in England, he ignored even the forms of a civil trial, and by summary process before a council of war hurried his leading opponents in rapid succession to the gallows.[2] Carver was among the first victims. Lawrence and Drummond, who had been Bacon's leading advisers, Berkeley was specially eager to seize. The former escaped him. The latter was captured, and when brought before the governor, he was greeted with the exclamation, "Mr. Drummond, you are very welcome; I am more glad to see you than any man in Virginia; you shall be hanged in half an hour." In all no less than thirty-seven were executed, while others escaped the same fate only by flight.[3]

[1] See the Burwell Ms.

[2] Berkeley later claimed that he acted as the king and his supporters had done during the Civil War in England; Colonial Papers, 1677–1680, 20, 27.

[3] A typical case of this kind appears among the papers from Isle of Wight county (Winder Papers). It relates to one William Weest, or West, who had enlisted under Bacon against the Indians; but when he heard the governor's offer of indemnity, he laid down his arms and came in. He was later seized and his life threatened, and he had to seek safety in flight.

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Many more were condemned to heavy fines, banishment, or imprisonment; and some were saved from the gallows only by acknowledging their treason and, on their knees with ropes round their necks, begging the pardon of the governor and council.[1]

These acts were confirmed by a royalist assembly which met in February, 1677.[2] This body also repealed the acts of the assembly of June, 1676, though by its own enactment it forbade pluralities in office-holding, brought to an end the exemption of councillors from taxation, and introduced a representative element into the vestries when they were engaged in the levying of county taxes.[3] In the work of suppressing the rebellion Berkeley had especially the assistance of three able and unscrupulous lieutenants, Robert Beverley, Edward Hill, and William Hartwell.[4]

[1] Hening, II. 546–558. [2] *Ibid.* 366. [3] *Ibid.* 389 *et seq.*

[4] Numerous petitions in Colonial Papers, March to May, 1677, prove the activity of Hartwell. For the doings of Hill see his Defense, Va. Mag. of Hist. III. and IV.

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CHAPTER IX

THE ROYAL COMMISSION OF 1677. VIRGINIA AT THE CLOSE OF THE STUART RÉGIME

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THE frequent changes in the ministries which succeeded the downfall of Clarendon in 1667 were in a way reflected in the organization of the administrative boards which had charge of plantation affairs. During the five or six years which followed 1670 a number of additional experiments were made in the organization of these boards. The fact will be recalled that in 1660 both a council of trade and a council of foreign plantations were created. But experience seems to have proven that one or the other of these was a superfluous piece of machinery. The membership of the councils may also have seemed too large. In July, 1670,[1] the number of members composing the council for foreign plantations was reduced to ten. Though the dignity of the board was somewhat lowered by the omission from it of the great officers of state, still it was provided that these officers might attend and vote, if they desired. The members of the council, as thus organized, were the Earl of Sandwich, president, Richard Lord Gorges, William Lord Allington, Thomas Grey, Henry Brouncker, Sir Humphrey Winch, Sir John Finch, Silus Titus, Edmund Waller, Henry Slingesby. The last named was secretary, and the quorum was five.

The ten members were salaried, and were instructed to secure minute information of the condition and government of the colonies and how the commissions which had been issued had been executed. They were also to ascertain the number of free inhabitants and of servants in the colonies, to see if any colonies were overstocked with servants or slaves;

[1] The commission for this board is not extant, but the instructions to it have been preserved, and a warrant to the attorney general, dated November 18, 1670, shows that the commission was issued on July 30 of the same year. Colonial Papers, 1669–1674, 77, 135; N. Y. Col. Docs. III. 191.

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to order that care be taken to encourage the best native products, the breeding of cattle, and the production of materials for shipbuilding. They should see that the Indians were treated justly and received no provocation.

In March, 1671,[1] six leaders of the nobility were added to the council — the Duke of York, Prince Rupert, the Duke of Buckingham, the Duke of Ormond, the Earl of Lauderdale, and Thomas Lord Culpeper. John Evelyn was made a salaried member. In August, 1671, Sir Richard Temple was also added to the board.

On September 27, 1672, a new commission was issued to the Earl of Shaftesbury and others to be a council for trade and foreign plantations.[2] This is understood to have been a consolidation of the two councils, — the one for domestic trade and the other for foreign plantations, — which had existed since 1660. Though it simplified matters, the arrangement which was made in 1672 continued for only two years. In December, 1674, after the fall of the Cabal ministry, the existing commission was revoked, and all the papers of the board were ordered to be passed over to the clerk of the privy council. On the 12th of the following March[3] (1675) the care of trade and plantations was intrusted to a committee of the privy council of twenty-one members. This brought the leading statesmen in the council into close connection with plantation affairs, including especially the Earl of Danby, Secretary Coventry, and Secretary Williamson. The immediate charge of the business was given to the Earl of Anglesey, who was lord privy seal, the Earl of Bridgewater, the Earl of Carlisle, the Earl of Craven, Viscount Fauconberg, Viscount Halifax, Lord John Berkeley, the chancelior of the exchequer, and the vice chamberlain, or any five of them, these men having been conversant with plantation affairs. Sir Robert Southwell was ordered constantly to attend the committee. The body, thus organized,

[1] N. Y. Col. Docs. III. 191; Colonial Papers, 1669–1674, 178; Evelyn's Memoirs, Edition of 1827, II, 337.

[2] Colonial Papers, 1668–1674, 407, 449, 631; Palfrey, III. 33.

[3] Colonial Papers, 1669–1674, 631; *ibid.* 1675–1676, 182, 183; N. Y. Col. Docs. III. 228, 229.

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was ordered to meet weekly and report to the privy council. It was known as the Lords of the Committee of Trade and Plantations.

The committee, about six months after its appointment, sent a[1] circular letter to the governors of the royal provinces, commanding them to transmit a full account of the condition of their respective provinces, their laws, officials, military population, course of trade, the condition of neighboring countries, and a statement of all other facts which seemed important. They should continue at intervals thereafter to send a journal of occurrences under the heads just designated.[2] Elaborate reports were submitted by governors of the island colonies, and correspondence was steadily maintained with them. Considerable information about New York was obtained by the examination of Andros in 1678, while Governor Dongan sent a very full report in 1687.[3] In 1671 Berkeley had reported for Virginia,[4] but we have no record of any later report during his administration. Culpeper reported in 1681 and again in 1683.[5] The only reply of Lord Baltimore to inquiries by the government concerning Maryland was in 1678.[6] But only in a few instances during the period under review did the reports of the English governors contain the systematic detail which the circular letter implied. The committee of trade and plantations was retained, as the instrument through which the privy council did much of its colonial business, until the board of trade was created in 1696. While the committee was in existence the system of executive control over the colonies was developed until it resulted, under James II, in the attempt to unite or consolidate them into a vast governor-generalship or presidency. The first stage of the process, so far chiefly as it affected the governmental system of Virginia, must now be described.

[1] Colonial Papers, 1675–1676, 269. See minutes of this body in Calendars. N. Y. Col. Docs. III. 231.

[2] In June, 1686, the command was repeated. *Ibid.* 375. The governors and intendants of Canada regularly made such reports in the form of journals.

[3] N. Y. Col. Docs. III. 260, 389.

[4] Colonial Papers, 1669–1674, 232; *Ibid.* 1675–1676, 374.

[5] Va. Mag. of Hist. III. 225; Colonial Papers, 1681–1685, 153, 496.

[6] Md. Arch., Council, 1667–1688, 264.

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In September, 1676, the news of Bacon's rebellion reached England, and the attention of the home government was at once diverted from the preparation of a charter for Virginia to measures for the restoration of order and quiet. Secretary Coventry and the other officials concerned realized that the administration of Berkeley must be brought to an end, though in such way as to inflict the least humiliation on the aged governor. The course of action adopted was to order Berkeley to return to England and report on the condition of the province, while provision should be made for the appointment of a lieutenant governor to serve in his place during his absence. A royal proclamation of pardon was issued in favor of Berkeley and the assembly for their share in granting the commission to Bacon to be general of the forces against the Indians, it being held that the act was done under intimidation. Pardon was also extended to all subjects who had been induced by false representations to join the rebels, if within twenty days after the proclamation was published they should make full submission and give security for good behavior. Letters were also sent to Maryland, New York, and Massachusetts for the arrest of Bacon, in case he should have fled thither, for he was excluded from all chance of pardon. The necessity of sending a royal commission to Virginia to inquire and report on the troubles was also realized from the first. While the composition and powers of that body were under consideration it was proposed to appoint Sir Henry Chicheley, one of the councillors of Virginia, lieutenant governor. But as the seriousness of the situation became more evident, this feature of the plan was dropped, and Colonel Herbert Jeffreys, one of the commissioners, was appointed instead.[1]

The commission itself consisted of Herbert Jeffreys, Sir John Berry,[2] and Francis Moryson. Of these Moryson was a Virginian, had long served as agent for the province, and was the only member of the board who was specially

[1] Colonial Papers, 1675–1676, 448–457, 476, 483.

[2] On Berry, to whose earlier services in the West Indies reference has already been made, see Va. Mag. of Hist. III. 147. Also Corbet, England in the Mediterranean, II. 126, 134.

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acquainted with local conditions. But he later wrote in the highest terms of both his colleagues, stating that no fitter person than Colonel Jeffreys could have been found to quell the rebellion, while Berry he commended as a man of unbiassed principles, prudent conduct, and unwearied industry.[1] Moryson's knowledge of Indian warfare and the resources of Virginia at once convinced him of the inexpediency of sending many troops with the commissioners, while he was convinced that the natural loyalty of the people would assert itself if their real grievances were redressed. But it was decided that the commissioners should take a force of about a thousand soldiers with them, and of the entire expedition, while at sea, Sir John Berry was appointed commander. Jeffreys, as head of the commission and himself a military officer, was intrusted with the duty of raising a part of the force, which were designated as "volunteers," and with the keeping of their accounts.[2]

The general view of the government,[3] as shown in its commission to Jeffreys, Berry, and Moryson, was that the disorders in Virginia were due to grievances which, because of the remoteness of the province from England, its inhabitants could not easily make known to the king. The duty of the commissioners should be to ascertain, by the examination of witnesses or in other ways, what those grievances were and report them to his Majesty, to the end that they might be redressed. They were to acquaint themselves with the laws of the colony and its political conditions, and report the same to the king. They also carried with them a royal proclamation which declared that those among Bacon's adherents who within twenty days after its publication should submit, take the oath of allegiance, and give security for good behavior, should be pardoned; while the servants and slaves

[1] Colonial Papers, 1677–1680, 42.

[2] *Ibid.* 1676–1677, 460 *et seq.* The master of the ordnance in England, who was intrusted in part with the outfit of the expedition, was Sir Thomas Chicheley. The admiralty was called into requisition to furnish the shipping for the conveyance of the troops. Berry also, when he arrived in America, claimed to have received from the king full power to command all merchant ships and seamen within the rivers of Virginia. Colonial Papers, 1677–1680, 12.

[3] *Ibid.* 1675–1676, 459, 468, 476, 483, 492, 493.

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of those who held out, if they would take arms under the governor or commander-in-chief, should be freed from service to their former masters. As it was supposed that the insurrection and the Indian war would both be in progress on their arrival, the commissioners were instructed to use their best efforts to bring them to an end. Bacon, if caught, they were to bring to trial and then send to England with proofs of his crimes. Certain additional instructions were sent to Berkeley, but their effect was largely nullified by a positive order that, because of his age, he should return to England and report the circumstances of the rebellion. Jeffreys, as lieutenant governor, should take his place.

In some respects the duties of this commission were much less important, as they were less difficult, than those of the body which was sent to New England in 1664. They had to do with only one colony and not with an entire group of colonies. They were not intrusted with the task of subduing an alien people. They were not empowered to hear appeals or to settle boundary disputes. They were to aid in subduing the Indians and in pacifying a naturally loyal people, and were to report the facts to the king. Diligence and an open mind were the chief requirements for such a task. But they had an enraged governor to deal with, a man made arrogant by long years of undisputed authority. His supporters in the council and assembly might easily make trouble. The commissioners were also bringing a considerable body of troops into a province which was distracted and impoverished by prolonged civil strife, and the finding of support for these men soon proved to be one of the most difficult tasks which the commissioners had to face. And yet their errand was one from which success and fruitful results might fairly be expected.[1]

The commission reached Virginia about the beginning of February, 1677. It found Bacon dead, his friends dispersed, and twenty or more executed. Jamestown was in ruins. Berkeley was in the midst of his reprisals. Not only were executions still in progress, but the governor,

[1] The chief source of information for the doings of the commissioners is in their report, which is printed in part in the Va. Mag. of Hist. IV. 117.

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whose plantation at Green Spring had been plundered, with the consent of the council was confiscating the property of the insurgents. He declared that the rebels had left him no corn and but one ox and one cow, and yet he had to support some two hundred men at his house. How then, he demanded, could he provide quarters for a thousand soldiers and a magazine of food and ammunition for their use? He had supposed that the commissioners would bring only a frigate or two with them and never desired any soldiers. The people also were startled by their presence.[1] It is not surprising, therefore, that the commissioners found great difficulty in quartering the troops, and that their presence raised as many obstacles as it relieved. It soon became apparent that their services against the Indians would not be required; while, now that the rebellion was ended, the province most needed quiet and an opportunity to recover from its half ruined condition.

On the other hand, the attitude of hostility and obstruction which Berkeley and the majority whom he controlled in the council and assembly, at once assumed toward the commissioners, makes it pretty clear that, if it had not been for the moral influence of the soldiery, the royal agents would have accomplished even less than they did. Since Bacon was dead, the governor considered it improper to publish the king's proclamation of amnesty which the commissioners had brought with them, but, contrary to their advice, issued one of his own instead. From the benefit of his proclamation he excluded eighteen of the rebels.[2] To a variety of questions about the general condition of the province and reforms which were immediately needed the commissioners could obtain no replies from Berkeley.[3] His pique was shown at times by the assumption of an air of mock humility, but more often by stubborn persistence in his chosen course of action.[4]

[1] Colonial Papers, 1677–1680, 11, 13, 17–19, 21, 22, 27, 37. At the middle of February Berkeley declared that he was keeping at least thirty prisoners in his house and a guard of fifty to secure them; this he had done on the charity of some of his friends.

[2] This proclamation the king revoked when later he heard that it had been issued. May 15, 1677, *ibid.* 86.

[3] Colonial Papers, *ibid.* 15, 18, 19, 61.

[4] *Ibid.* 20, 24, 25.

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At first the commissioners were careful to assume the attitude of advisers, but, as Berkeley continued the seizure of the persons and property of delinquents without trial, their tone was changed to one of protest. At the outset they had told the governor that they thought he should refer to the king the whole question of the transfer of the estates of delinquents as a form of restitution to loyal sufferers. But a crowd of impoverished supporters were clamoring for relief, while Berkeley desired as well to make his own losses good. Therefore the process of confiscation continued. The commissioners condemned this course of action as wholly illegal and unjustifiable, but Berkeley sought to clear himself by citing instances of seizures which had been made by order of the king during the Civil War in England.[1] The commissioners finally demanded that he should furnish them with a list of all seizures, compositions, fines, and forfeitures which as the result of the rebellion devolved to the crown; also a list of all the insurgents who had been indicted, convicted, and punished, in order that a strict account thereof might be rendered in England. But this the governor neglected to do, and the commissioners had to make such inquiry of their own as was possible.[2]

In February the session of the assembly, to which reference has already been made, was held. This was in harmony with the instructions of the commissioners, and they submitted to it the measures of reform which seemed to them adequate or at least most important. But as these most directly concerned the alleged large salaries and perquisites of members, they naturally did not find a place in the legislation of the body. The assembly was also told that the conclusion of peace with the Indians was the king's affair, and in reference to this they were to do no more than offer advice. To the passage of a general act of oblivion the body was opposed, and in this the commissioners saw convincing evidence that the understanding between the members and Berkeley was fully maintained. Councillors and assemblymen, as well as the governor, in the opinion of

[1] *Ibid.* 20, 21, 27.

[2] *Ibid.* 37, 38, 41.

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Jeffreys and his associates, were interested in the continuance of reprisals.[1] To the letter of the commissioners the assembly made no reply.

Under these conditions it naturally became a prime object of effort on the part of the commissioners to get Berkeley out of the province. But in the royal instruction on this point it was stated that the governor might suit his convenience in the choice of a date for his departure. Of this, on advice of the council, full advantage was taken. Jeffreys also had brought with him a commission of oyer and terminer to the governor, to be used in the trial of the rebels. The effect of this — as also interpreted by the council — was to continue Berkeley in his office, while diligent use was made of the commission in the trials which followed.[2] Berkeley also insisted that, when he should go, Jeffreys would be but his deputy and that the next year he should return and be governor again. By these tactics he was able to postpone his departure till the beginning of May. Shortly before he went he, or some of his family, attempted to insult the commissioners by ordering the common hangman to drive them home after a call; while, as his final message, he assured Jeffreys that the people would soon see the difference between the rule of one who knew their laws, customs, and nature and one who totally lacked acquaintance with these subjects. In a few weeks after his arrival in England Berkeley died, and such inquiry as would otherwise have been made into his conduct was by that event prevented.[3]

The commissioners, whose most trying relations had been with the governor, found the rest of their task somewhat simplified by his removal. On May 29 they concluded a treaty with the Indians of lower Virginia, in the benefits of which the English of Maryland were also to share. The terms of this agreement fittingly summed up and concluded the development of Indian relations within the settled re-

[1] Colonial Papers, 1677–1680, 26, 40, 42.

[2] *Ibid.* 21, 22, 24, 40, 64–67, 78, 92.

[3] *Ibid.* 105, 106, 107, 138, 142, 143. On the return of the commissioners some effort was made by Lord John Berkeley to clear his brother's reputation. *Ibid.* 186, 187, 194.

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gions of the province during the seventeenth century.[1] They are also in marked contrast to the policy of extermination which was advocated by Bacon and his followers.[2] The Indians acknowledged immediate subjection to the king of England, paying yearly in lieu of a quit rent three Indian arrows, and in March of every year tendering to the governor at his residence twenty beaver skins. By these acts the chiefs acknowledged that they held their dignities and lands of the king. Their lands were also to be confirmed to them under the seal of Virginia as freely "as others his Majesty's subjects." Finally, Indians who had not sufficient lands were to have such laid out and confirmed to them and were to keep them as long as they maintained due obedience to the king and his government. No Englishmen were to settle within three miles of an Indian town, and if any should encroach on the land of natives, they should be removed. The Indians should enjoy under license their accustomed hunting, fishing, and oystering grounds, and by means of licenses all their intercourse with the whites should be regulated. They were to give notice of the approach of enemies and should be supplied with ammunition to enable them to actively aid the English. If any cause of difference with the whites should arise, they should resort to the governor and try to have the dispute adjusted. Subject to these limitations, the government of the chiefs over their tribesmen should continue. Subsequently the lords of trade found that steps had not actually been taken to include Maryland in this treaty, and therefore an order in council was issued[3] to the effect that an Indian policy in which the colonies generally would be included should be initiated. To the consequences which followed from this, not only in Maryland and Virginia, but in New York, reference has elsewhere been made.[4]

In obedience to their instruction to report upon the grievances of the people against the government of Virginia,

[1] Copies from Ancient Records of Va., in Library of Va. Hist. Soc.

[2] This course was repeatedly urged by Bacon himself, and the idea appears in the grievances of some of the counties which most clearly exhibited his spirit.

[3] Colonial Papers, December 18, 1677, January 18, 1678; MacDonald Papers, Va. State Library.

[4] Vol. II. of this work, p. 422 *et seq.*

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the commissioners had early called upon Governor Berkeley for assistance. He had caused orders to be issued to the justices of the counties to call sessions of the county courts and summon the people thither to state their complaints.[1] Reports have been preserved from seventeen counties and two parishes. In most cases they are certified by the county justices and the local burgesses, and return of them was made to the assembly of February, 1677, as well as to the royal commissioners. From both Nansemond and the Isle of Wight counties came two sets of grievances, one in each case being a genuine expression of Baconist sentiment.[2] The statements from the upper counties were filled with references to the Indian war. To evils of this kind the tidewater counties were for the most part oblivious. Accomac and Northampton[3] were wholly loyal and asked only for a few local reforms. Several of the counties (even Charles City) referred to Bacon as an impostor or rebel, and none expressed sympathy with what were supposed to have been his later aims. Several condemned the doings of certain resident councillors or other officials, as Charles City county in reference to Edward Hill, Gloucester county in reference to Robert Beverley, the Baconists of Isle of Wight against Joseph Bridger, and those of Nansemond against John Lear and David Lear.[4] The plundering of estates by both parties during the later stage of the rebellion

[1] The proceedings in Northumberland county (Winder Papers) well illustrate the method of taking this sworn inquest. The statements from some of the counties are printed in the Va. Mag. of Hist. II. and III., while brief summaries of them all are to be found in the Colonial Papers under date of March, 1677. Copies of the grievances in full are in the Winder Papers, Va. State Library. A number of individuals also presented complaints or petitions, which are calendared among the Colonial Papers. See Colonial Papers, 1677–1680, 202, and many other entries.

[2] That from Isle of Wight County is in Va. Mag. of Hist. II. 380.

[3] See Va. Mag. of Hist. II. 280.

[4] Replies, more or less detailed, to these charges are in existence from all the accused except the Lears. That of Hill is in Va. Mag. of Hist. III. and IV. Beverley made a defence before a committee of the assembly of February, 1677. The royal commissioners inquired into the charge against Bridger (who was a relative of one of them) and found it not true. See Winder Papers.

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was generally condemned, and restitution to innocent parties was demanded.

How far these statements of grievances were the genuine expression of popular feeling and how far they were colored by the influence of officials who had a hand in drafting them, it is not easy to decide. In the case of some of the counties the statements are pretty clearly official and perfunctory. At the other extreme stand the Baconist protests from Nansemond and Isle of Wight, which were repudiated by the county authorities and contain the only expression of distinctly lower class opinion among the tidewater counties which has survived. But the general agreement between the measures urged in these "grievances" and the legislation which was enacted by the assembly of June, 1676, is perfectly clear.[1] The acts of that assembly did not include all or nearly all of the reforms which were suggested by the counties, but some of them were there and the rest were similar in purpose. The demand was general for low taxes, for a stricter accounting and control over expenditure, for a general regulation of fees, for a reduction of the cost necessitated by sessions of the assembly even though that should lead to the lessening of their number. The recurrence of complaints about the expenditure on forts and the tax for buying up the Arlington-Culpeper claim shows how deeply they had offended the colonists; but they were matters in which Berkeley and his advisers were not so seriously at fault. It is true that the province was almost practically defenceless; but that was a condition which it shared with all the other colonies, while against the waste at Point Comfort the Virginia officials had always protested. Some pretence of having instituted an improved system of audit and accounting was made by the assembly of 1677;[2] but methods in such matters were crude in all the colonies, and the demand was probably for a reform that was more thorough than practice either in England or America would then have justified. The complaints that county levies were made in secret ses-

[1] Two or three counties demanded that those laws be reënacted.

[2] The Winder Papers contain certain imperfect accounts which were sent by that assembly to England.

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sions of the justices, that favoritism often determined appointments, that sheriffs held office beyond their legal terms; the insistence that there should be no exemptions from taxation, that taxes should be levied on land rather than by poll, that county records should be made more accessible, — were somewhat less general, but were aimed at real evils in the political system. Many of the demands were for the remedy of wrongs which had been committed by one party or the other during the late civil troubles and called for no change of policy.

The view therefore seems justified that the "grievances" fairly expressed the prevailing opinion concerning the evils from which the province was suffering. As the commissioners were well aware, they did not indicate the existence of a dangerous spirit of revolt. "You should acquiesce in the laws passed by your assemblies," was the answer made to most of the complaints by the assembly of February,[1] 1677; and, now that the Indian war was over and Bacon was dead, the disposition to do this was general. But this sounded the knell of further sweeping reforms. That the tone of assemblies would be greatly changed, was in no way probable. Now that the struggle with the Dutch was over, Virginia waters were not again visited by hostile and destructive squadrons. The unity of the province was not again imperilled by proprietary grants. For some years the quiet of the border settlements was disturbed by occasional Indian raids from the north. For a time they were referred to with anxiety in the official communications to the home government, and they occasioned the stationing of troops of horse on the upper courses of the principal rivers. Because of them, as we have seen, a more comprehensive Indian policy was adopted, and that at the instance of the English government and its appointees. But after the outbreak of the French wars, the Indians gave Virginia very little trouble. Her peace was scarcely disturbed. Her easy-going methods of defence were not again brought seriously to the test till the middle of the next century. The tobacco industry slowly adjusted itself to requirements of the acts

[1] Winder Papers.

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of trade. A fair degree of general prosperity was maintained. Though the complaints and agitations which appear at large through the colonies were reflected in Virginia, no organic change occurred there, and the trend of its legislation was not seriously modified. The crust of social and official privilege formed again, or rather it had never really been broken through, and Virginia easily and naturally took its place within the growing circle of royal provinces.

Berry and Moryson returned to England in the summer of 1677, taking with them the ships and all of the troops except two companies. Jeffreys was left as lieutenant governor, a post which, with declining health, he held till his death, early in 1679. It was inevitable that for some years affairs in Virginia should continue in an unsettled state. Though the Indians of lower Virginia were effectually pacified, the northern tribes continued their raids. Some outrages were committed and fears were entertained that there might be another Indian[1] war. In many quarters acute poverty and distress followed in the wake of the rebellion. The competition of Maryland and of the Albemarle settlements in the production of tobacco continued as serious as ever, and as a result the prices of that staple ranged low. The sensitiveness of the taxpayer continued, and it was now shown particularly in his insistence that quit rents should be remitted. This brought up the question of the claims of Lord Culpeper under the grant of the Northern neck, a matter which was not yet adjusted. The home government was also slow in sending remittances for the two companies which had been left in the province, and especially to pay for their quarters. In 1679 the counties in which they were stationed complained of this to the assembly, and on its representation to the home government sums for the payment of arrears were sent over.[2]

Jeffreys, moreover, was left in the midst of a violent con-

[1] See especially the letters of Lieutenant Governor Chicheley in 1679; of Secretary Nicholas Spencer, in 1680, and letters to Lord Culpeper, in July, 1681. Colonial Papers.

[2] Colonial Papers, May 20, November 1, December 1, 5, 1679, and January 12, 1680.

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troversy with the assembly over the charge that Berry and Moryson, before they returned to England, had forced Robert Beverley, the clerk, to surrender into their keeping the journals and other papers of that body for the sessions of 1676 and of February, 1677. This Berry and Moryson claimed they were empowered by their commission to do; but the assembly denounced the act as an outrage, as inconsistent with their privileges as a legislative body; and they were ready to affirm that no king of England had ever treated parliament in such fashion. Jeffreys charged Beverley with trying to bring the entire work of the commission into contempt, and put Philip Ludwell under restraint. This was evidently a continuation of the quarrel with Berkeley and his party, and several years passed before Virginia and the home government heard the last of it.[1] It thus appears that the situation in Virginia called for wise and prompt action on the part of the home government, for such an adjustment of affairs as would facilitate the healing of the wounds which had been inflicted during the late rebellion. In the first place the commissioners were of course looked to for light on the situation.

At the close of the elaborate report[2] which the commissioners on their return presented to the committee for foreign plantations, they recommended that the property which had been forcibly seized during the late rebellion, and especially since the laying down of arms, should be restored; that a general act of oblivion be prepared in England and sent to the assembly, with the injunction that it be passed; likewise, that the act of attainder passed at the last session of the assembly be repealed. It was also recommended that his Majesty order a good fort and a state house to be built at Jamestown and a garrison to be maintained there. The expense of this should be paid out of the colonial quit rents and a tax on imported liquors, similar to that levied in Barbadoes. This suggested a defect in the fiscal system of Virginia which had occasioned not a little of the complaint

[1] Colonial Papers, 1677–1680, 197, 198, 220, 301–302; 197, 220, 301.
[2] The report is printed in part in Va. Mag. of Hist. IV. 117 *et seq.*

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before and after the uprising; namely, the oppressiveness of the poll tax, which was due in part to the fact that the revenue was derived to so large an extent from this source. The commissioners suggested that the tithables be relieved by the introduction of another form of tax, the import duty, a form in use in most of the other colonies, but which it had not yet occurred to the Virginians to adopt. The commissioners also thought that in future, till the country should be fully and peacefully settled, the Virginia ships should go each year in fleets under the convoy of a royal frigate. It was finally their opinion that the growth of independent settlements in Maryland and Carolina would in time result in the political and economic ruin of Virginia. "Therefore," they say, "we propose that (with a salvo of right to the Proprietors) the jurisdiction and power of government may so reside in your Majesty, that they may be obedient to all orders, rules and processes of your Majesty and Council, else you will find you have not only given away so much land but so many subjects also, and the next generation will not know or own the royal power, if their writs, trial, and processes be permitted to continue in the name of the Proprietors, and their oath of fealty without any salvo of allegiance to your Majesty. It not only ruins servants, but runaway rogues and rebels fly to Carolina on the south as their common subterfuge and lurking place, and when we remanded some of the late rebels by letters, we could not have them sent back to us." In these words the commissioners registered their opinion against the policy of creating more chartered colonies and in favor of restricting the independence of those which were already in existence.

The lords of trade examined the report of the commissioners and the statements of grievances from the Virginia counties in considerable detail and expressed satisfaction with their conduct.[1] They necessarily accepted a view of the origin of the trouble which was in general harmony with that of the commissioners. They held that Berkeley and the assembly had exceeded their powers in the granting of par-

[1] Colonial Papers, December 6, 1677 *et seq.*

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dons as well as the issue of attainders, and reported that all laws which had been passed contrary to the royal instructions and proclamation should be annulled.[1] Efforts on the part of Lord John Berkeley and Alexander Culpeper to clear away the charges against the memory of the late governor met with[2] no encouragement. A marked willingness, on the other hand, was shown to do justice to such petitioners as the widow of William Drummond, and to any who, like Captain Gardner, had done the king a good service.

As Jeffreys had died and Sir Henry Chicheley, who succeeded him, was far from competent, steps were taken in 1679 to send over a governor of full rank who should carry with him the final orders of the king and, if possible, complete the pacification of the province. Thomas, Lord Culpeper, was selected for the place. Though he appears to have been a man of some ability, the selection was an unfortunate one because of his earlier connection with Virginia as its would-be proprietor, and because, as the events proved, he was not at all inclined to remain in the province and discharge his duties there. His interest in Virginia seems to have been limited chiefly to securing a favorable settlement of his claims. But his commission and instructions were prepared with care, being modelled in part after those of the governor[3] of Jamaica, and were more elaborate than any which had previously been issued to a governor of a continental colony. The issue of these instructions, followed as they soon were by those of Lord Howard of Effingham in Virginia and Governor Dongan in New York, marks the time when the form used by British officials for this purpose in the royal provinces became fixed as it was to remain for the century to come. Like the pretorian edict of Rome, the commissions and instructions of the governors of the British provinces henceforth conform to one model or type, and differ from it only in special details. In this, as in so many other respects, uniformity was taking the place of the variety which had existed among the chartered colonies. Another

[1] Colonial Papers, August 2, December 11, 1677.
[2] *Ibid.* December 4 and 6, 1677.
[3] *Ibid.* December 21, 1678.

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stage was thus reached in the process by which Virginia fully assumed its place within the group of royal provinces.

Considerable attention was paid by the lords of trade to the selection of Culpeper's council, and their names were inserted in his instructions.[1] He was ordered not to appoint to office any who had belonged to the Bacon faction without good reason. Vacancies in the council should be filled with men of "estates and abilities," and their names should be sent to England for confirmation. All colonists should be required to take the oath of allegiance. No officials should be removed without good cause. With the advice of the council, fees should be regulated and fixed at moderate rates. Land which had lain seven years unimproved should be granted to new patentees, and no more should be granted than would probably be improved. Quit rents should be collected from the time of the grant, instead of seven years later, and should be used for the building of a fort and the support of the colony government in general. The building of towns should be encouraged, and colonists obliged to settle there if possible. A more equitable form of tax than the capitation should, if possible, be found; while all revenue acts should mention the king and all writs should run in his name. Indian affairs should be carefully regulated. No minister should be appointed without a certificate from the bishop of London, and adequate provision should be made for their support. The governor should see to it that the burgesses were chosen exclusively by freeholders. The government in this connection introduced a requirement which was very characteristic of tendencies operative at that time, but one that was destined to be short-lived. It involved an application of the principle of the Poynings act to a colony by requiring that no assembly should be called without previous order from the king, and that all bills which it might be found desirable to pass should first be sent to the king, that they might be returned in approved form. Three bills had already been prepared, which were given to Culpeper, and he was ordered, as soon as possible after his arrival to call

[1] Colonial Entry Book, Vol. LXXX; Colonial Papers, March 14, 1679.

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an assembly and have them passed. One of these was intended to secure indemnity and oblivion for acts done during the rebellion, another was a revenue bill, and a third was intended to grant the governor power to naturalize aliens. Culpeper was also instructed to reprove the assembly for its attitude on the question of granting commissioners access to its records. Robert Beverley and Edward Hill should be removed from all places of trust and not readmitted till the king's pleasure should be further known. Finally, he was required to report the manner in which he executed each several instruction. At the beginning of 1680 circular letters were sent to the governors and secretaries of Virginia, Barbadoes, Leeward islands, and Jamaica, ordering them to send regularly to England copies of their journals and all important papers which came before them, with accounts of debates and other events, those affecting trade being specially mentioned.[1]

Owing to the Popish Plot and various other causes, the departure of Culpeper for Virginia was delayed till almost the close[2] of 1679, and at his final going he was threatened with the high displeasure of the king at his neglect of duty, to be shown by the possible appointment of another to his place. But the courtier-governor carried with him a letter from the king granting him full permission to return as soon as in his discretion the state of affairs in Virginia should seem to permit, during which visit to England he should not only report on Virginia but attend to his own long neglected interests.[3]

At the beginning of May, 1680, Culpeper arrived in Virginia. In June he called the assembly together and laid before it the bills which he had brought over, but he refrained from administering the reproof concerning the records. Robert Beverley also retained his position as clerk of the assembly. Two of the bills which the governor submitted were passed without change, while to the revenue[4]

[1] Colonial Papers, January 14, 1680.

[2] The preparations for his departure may be traced in the Colonial Papers between the summer of 1677 and the close of 1679.

[3] *Ibid.* September 10, December 3, December 17, 1679.

[4] *Ibid.* May 2, with various entries during June and July, 1680. The journal of the burgesses is briefly outlined in the Calendar.

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act a proviso or two for the repeal of previous acts was added. After the close of the session the governor by proclamation declared the repeal of six of the laws which had been passed by the assembly of February, 1677, among them both the act of pardon and that of attainder.[1] The object of this was to restore, as far as possible, the conditions as to pardon which had been laid down in the royal proclamation of October 27, 1676, which, with some additions to the list of excepted parties, had just been enacted into law by Culpeper's assembly. This assembly also passed an elaborate, but futile,[2] act to encourage the building of towns and another for the maintenance of forts and garrisons on the principal rivers.

This work completed, before the end of August Culpeper started, *via* Boston, for England. At the same time a petition from the assembly was sent to the home government, asking that some means might be taken for reducing and permanently limiting the stock of tobacco. This was accompanied with the oft-repeated representations concerning the low price of the staple and the consequent discouragement which prevailed in the province.[3] When the petition was laid before the commissioners of the customs, they thought, as always, of the revenue (averaging £100,000 per year) which tobacco yielded to the British exchequer; they reflected also on the loss to shipping which would result from a cessation, and on the possibility that the Dutch, French, or Spaniards would thereby be encouraged to increase their output; they were also inclined to discount the cry, so often raised, that tobacco was unsalable, while they professed to hope for some beneficial change from the building of so many new towns. The result was that the plan of a cessation received no support from the English authorities, and before many months had passed serious consequences followed from this in Virginia.

[1] Colonial Papers, July 8, 1680; Hening, II. 366 *et seq.*

[2] On the alleged effect of this act in promoting the ill feeling which found expression in the riots of 1681, see a report of the Council of Virginia, Hening, II. 561.

[3] Colonial Papers, July 9, August 20, December 13, 1680, and January 10, 1681.

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After he left the province, Culpeper, in a letter to Councillor Bacon, signified his desire that the assembly should be prorogued to meet in April, 1681. But later an order was issued by the king that it should not meet until the following November, it being expected that by that time Culpeper would have returned to Virginia. A proviso, however, was introduced into the order to the effect that, if it became necessary in the interval to call the assembly together, it should be done only with the consent of seven of the council.[1] Unfortunately the royal command did not reach Lieutenant Governor Chicheley till after the evil had been done. On the strength of the letter which Culpeper had sent to Councillor Bacon, and without consulting the council, Chicheley permitted the assembly to meet on the 18th of April.[2] By that time the royal order that there should be a further prorogation had arrived and was communicated to the assembly. With it came also a command, issued contrary to the advice of the lords of trade and the testimony of all whom they heard on Virginia affairs, that the arrears due the two independent companies should be paid and they disbanded unless the province was ready to bear the cost of their maintenance.[3]

As the members had come together, the council advised that they be kept long enough to decide what course should be taken in regard to the soldiers. Therefore the two royal orders were laid before the burgesses and their reply was awaited. But the influence of Beverley was as great as ever, and the minds of the members were filled with the futile idea of cessation. They gave no indication of agreement with the governor and council, and after several secret sessions, during which they were thought to be preparing a tobacco act, the lieutenant governor prorogued them till November. Within a week thereafter rioters gathered, and the destruction of tobacco plants began in Gloucester county. It rapidly extended to New Kent and other

[1] Colonial Papers, 1681–1685, 135, 174, 185, 244, 245.

[2] See outlines of the Minutes of the Council, Colonial Papers, *ibid.* 221, 226, 227.

[3] *Ibid.* 130, 134, 135, 142, 143, 171, 174.

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counties.[1] Proclamations were issued, the militia called out, patrols organized; but thousands of plants were destroyed by the rioters. The disturbances were continued through May, and did not entirely cease till August. Among the many who were arrested was Beverley himself.

Information that trouble was likely to follow reached the lords of trade before the middle of June,[2] and Lord Culpeper was hurried off on his second voyage to Virginia. He was furnished with a revised set of instructions,[3] by which he was required to insist again on the repeal of the obnoxious resolution of 1677 and on the passage of an act declaring the right of the king to command the records of the assembly; he should recommend the addition to the fiscal system of the province of an import duty on liquors, and should settle a more certain and reasonable tax on tobacco; that he should reduce the salaries of burgesses; that laws for permanent objects should be made indefinite in duration; that appeals to the king in council should be allowed in suits involving £100 and over. The possibility, with the consent of the council, for a restraint on the planting of tobacco was also suggested.

When Culpeper arrived, the session of the assembly for November, 1682, was near its close. He at once removed Beverley from his offices and brought four persons who had been concerned in the riots of May to trial on the charge of treason.[4] Three were found guilty and of these two were executed. As the offenders generally were not conscious of treasonable intent, the reprisals were not carried further. Indeed, Chicheley had already issued a general pardon, and Culpeper considered that the offences in no case really involved treason.[5] The

[1] *Ibid.* 226, 228, 232, 237, 241, 275. [2] *Ibid.* 250, 260, 267, 275.

[3] *Ibid.* 188, 496; Va. Mag. of Hist. III. 226 *et seq.*

[4] The act 39 Elizabeth against breaking down enclosures was used for the purpose. A considerable collection of documents in reference to Beverley is printed by Hening, App. to Vol. III.

[5] Against Beverley himself Culpeper could find proof of nothing worse than "rudenesse and saucynesse and an Indeavor to compasse his ends by prevailing on the easynesse of an enclining Governour, and causing S^r Henry Chicheley to stoppe shipps." Va. Mag. of Hist. III. 230. For the final disposition of the case against Beverley see Colonial Papers, May 9, 1684.

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acts of the assembly Culpeper passed, though he did not approve them, preferring that the odium of their veto should rest on the authorities in England. Of his instructions which called for legislation he made no attempt to enforce any, for the session was too near its close. In general he interpreted his instructions as freely as possible, in the interest of the peace of the province and his own quiet. In May, 1683, after appointing Nicholas Spencer president of the council and leaving the government in the hands of that body, Culpeper started again for England. On his arrival a second report was duly submitted, but his lordship's indifference towards his office and the province was now too apparent to be longer ignored, and Francis, Lord Howard of Effingham was appointed as his successor.

In religion he was a Catholic, and thus was ready to fall in with the declaration of indulgence when it was issued. But his religion does not seem to have affected the discharge of his official duties more than did that of Governor Dongan of New York. In fact, as we have seen, the two were honorably associated in the effort to develop joint action on the part of the colonies in Indian affairs. Lord Howard made it a condition of his accepting the appointment, that he should be permitted to spend the hot seasons in the north; and his visits to New York were well utilized in the way just indicated. In Virginia itself he faithfully reflected the autocratic tendencies of the time, upholding on all occasions the crown and the colonial executive and becoming involved, as a result, in frequent controversies with the burgesses.

Though the majority of the council acted in general agreement with the governor, the burgesses showed a considerable vigor and independence. It was at this time that the separation between the two houses became complete. This was apparently effected by the abandonment, at the instance of the governor, of the custom of appointing committees of the council to meet with the burgesses. Henceforth only committees of conference were appointed. In the session of 1684 the burgesses demanded an accounting in the case of the export duty of 2*s*. per hogshead on tobacco. The governor told them that the tax was in arrears, but that the

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accounting was a matter for the lords of the treasury to attend to. But he gave them the good advice to lay a duty on imported liquors, which they did by the passage of a temporary act, that was later reënacted, to the evident relief of the tithables throughout the province. The desirability of building a residence for the governor was generally admitted, but the funds were not easy to be found; and the discussion later drifted off to the idea of erecting a province house instead, where the court and assembly might sit, but this also finally ended in nothing. In accordance with his instruction, the governor firmly insisted that fines and forfeitures should go to the king, and not into the treasury to be used for the purpose of meeting the expenses of the province. At the close of the session the governor refused to join with the burgesses in an address to the king on the subject of appeals. The burgesses then sent it separately, and although, because of certain improper expressions which it contained, it did not actually reach the king, it doubtless helped to establish the rule that £300 should be the minimum limit above which civil suits became appealable to the king in council.[1]

In the autumn of 1685 a long session was held, in which the burgesses came to an issue with the governor on several questions. Beverley had to an extent regained power, and was again elected clerk of the assembly. The most important controversy arose in connection with the passage of a new bill designating ports and wharves. This passed through the ordinary course of legislation, being amended by the council and the amendments agreed to by the burgesses, and the whole ordered to be signed by the clerk of the council and engrossed. But on perusing the bill before it was finally to be read, the governor found that no provision had been made for fees for the collectors of dues at the ports. He insisted that a clause providing for this should be inserted; the burgesses refused assent on the ground that the bill was already passed and a law. Lord Howard insisted that it was not a law till publicly signed by himself.

[1] Colonial Papers, 1681–1685, 619–640, 747; Hening, II. 9 *et seq.*

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He also claimed that after bills had been assented to by himself and the council, through the negative voice or veto power which he had from the king he could refuse to sign them if he found them objectionable. He sent the burgesses the clause in his instructions which bore on this matter and offered to lay the bill aside till the pleasure of the king could be known. But to all this the burgesses refused their assent. They declared that the veto power of the governor must be exercised, if at all, by his action in the council. The fact seems to be that usage varied, conforming in some cases and in some provinces to the custom insisted upon by the governor, and in others to that which was urged by the assembly. The occasion of the difficulty lay in the fact that the governor held a seat in the council when it was engaged in legislative business. That point, however, does not seem to have been raised on this occasion. When the case was reported to the home government, it supported the governor, and at his suggestion it ordered that the clerk of the burgesses should thereafter be appointed by the executive of the province. As Beverley was suspected to have been responsible for the omission of the clause, he was declared incapable of holding any public office and threatened with prosecution for defacing the records.[1] In view of the fact that the burgesses had some show of right for their contention, both of these penalties must be regarded as unduly severe and arbitrary.

In order to relieve the province from the expense of frequent sessions, of which there had been so much complaint at the time of Bacon's rebellion, the governor asked that authority be given him and the council to impose a levy to meet incidental charges; but the concession was refused. He told the burgesses that he was raising twenty-four men for defence, and asked them to raise as many men at the expense of the colony; but this also on the plea of poverty they refused. On the strength of the treaty which the governor had concluded at Albany, they even went so far as to repeal

[1] Colonial Papers, 1685–1688, 115–126, 150, 184, 224. Hening, III. 40, 550. A manuscript copy of the journal of this assembly is among the papers of the Va. Hist. Soc.

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the militia act of the previous session and to remove the horsemen who had been stationed near the heads of the rivers.[1] He also brought forward his instruction that quit rents be paid in sterling and that the law making them payable in tobacco be repealed; to this an emphatic negative was returned. The burgesses objected to a fee which had recently been imposed for attesting public documents and affixing the seal to them, a duty which was connected with the governor's power as chancellor. Claims from the counties and from individuals against the treasury were also scanned with attention by the burgesses, though not till 1691 was the control of the assembly over expenditures confirmed by their securing the right of electing the province treasurer.[2]

The instructions of the king in reference to this assembly had closed with the command that it should be dissolved. But before this reached Lord Howard he had called it together again — in October, 1686 — and its session[3] was well advanced. Though at the outset the governor expressed the hope that they might have a short and happy session, the assembly revived the questions that were formerly at issue and wholly failed to confine themselves to the measures which he initiated. The question of the governor's seat in the council as bearing on his exercise of the veto power was mooted. Objection was made to the fixing of attorneys' fees by proclamation. Notwithstanding the king's proclamation, they continued to object to the payment of quit rents in money. Protest was still made against the levy of the new fees for the passing of instruments under the province seal, because it had not been approved by the assembly. Against giving the governor and council authority to impose levies during recesses of the assembly they were as firmly opposed as ever. Neither could they and the governor agree upon the terms of a militia bill. Over a bill prohibiting the planting of tobacco after the last day of June in every year, in the hope thereby to check its excessive production, we are told that the governor hesitated long; but he passed it and

[1] Hening, III. 38.
[2] *Ibid.* III. 92.
[3] Colonial Papers, 1685–1688, 260, 271, 279, 281, 313, 319, 391.

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it became law. At the close of a session which was distinguished by persistent criticism of the executive and its claims, the governor announced to the assembly that it was dissolved by express order of the king, a circumstance which he hoped would not soon be repeated.

The newly elected assembly, which met in May, 1688, proved no more tractable than its predecessor.[1] The immediate object of the governor in calling this session was to procure the passage of an act against the export of tobacco in bulk, and the repeal of the act of 1686 which prohibited the planting of tobacco after the close of June. A revised copy of the laws was also submitted to the burgesses for their consideration. But, wrote Secretary Spencer, after the session, "this most necessary work was not considered, for debates of grievances jostled out all matters of importance." The governor, in the hope of allaying hate, tried to bring about a conference with the council; but the burgesses presented in reply to this a sharp arraignment of the government and would not consent to a conference unless it was devoted to the discussion of grievances. The project was dropped. The complaints were the same in substance as those which had agitated the previous assemblies, though they were increased by the appearance of a new fee for the escheators and apparently by the fact that an act concerning attorneys, passed as far back as 1682, had recently been repealed by royal proclamation. The effect of this on the status of colonial laws in general was brought into discussion, and questions which had agitated Maryland and were to disturb other provinces were raised thereby. The demand was again made that fines and forfeitures should go toward the general expenditures of the province.

An explanation of the determined attitude of the assembly is found not only in the strides which the executive was making through the extension of fees and the issue of proclamations, enlarging its functions and employing the dispensing power as in England, but in the number of what were believed to be arbitrary removals from office which were resorted to as punishments of political opposition.

[1] *Ibid.* 539, 544, 548.

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During or after the session of 1686 the governor removed Philip Ludwell from his seat in the council and from a collectorship, because he believed him to be fomenting disputes in the assembly[1] and because of the evidence which he found of an active alliance between him and Beverley. Ludwell had also favored the "undutiful" address which was sent to the king in 1684. Ludwell is also authority for the statement that several members of the assembly, naming William Sherwood, Thomas Milner, Arthur Allen, John Smith, William Anderson, and Charles Scarborough, had been suspended from their offices because they were concerned in legitimate political opposition. One of their number, Anderson, he declared, had been committed to jail for months without trial or *habeas corpus*. In general no reasons had been given for these suspensions, and the accused had been given no opportunity for defence. The king's declaration of indulgence had also been proclaimed and certain papists appointed to office.

These and other charges Ludwell carried to England and submitted to the king in council in the fall of 1689. Lord Howard in the meantime had returned to England,[2] and during the hearings on the case submitted a reply to the charges. He stated that Anderson had been imprisoned because he had incited the people to mutiny and had refused to give security for good behavior. Smith and Allen had been displaced, not because of their doings in assembly, but because as justices they had openly opposed the appointment of sheriffs by the governor and had insisted that the matter should be settled according to a law which had long before been repealed. The other cases he traversed by the general statement that, when reorganizing the militia, he had displaced a few and appointed others in their room. The cases of Ludwell himself and of others he had fully reported to the king. As to his dispensing with the oath of supremacy and his appointment of papists to office, he could appeal to the instructions of the king. The reply of Lord Howard

[1] *Ibid.* 320; Col. Papers, 1689–1692, 147, 149, 151, 158, 159, 183, 222.

[2] He returned on leave in the fall of 1688.

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was accepted by the government as sufficient for its purpose, for in November, 1690, though he was a Catholic and a confessed place-hunter, a new commission was issued to him as governor, with a sinecure and half the salary; while Francis Nicholson was appointed as his lieutenant and sent over to actively perform the duties of the office.

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CHAPTER X

THE DISSOLUTION OF THE MASSACHUSETTS COMPANY

For some years after the return of the royal commissioners and the fall of the Clarendon ministry, there was a lull in the controversy between Massachusetts and the crown. By occasional petitions, however, the Mason and Gorges heirs kept their case before the English government. In 1670 and 1671 Gorges petitioned twice and Mason once.[1] Both of Gorges' petitions led to special inquiry. On the first occasion the council for foreign plantations reported that Gorges had proved his allegations "in every point." In 1671 and 1672 the board devoted much attention to New England affairs, examining the papers of the commissioners of 1664 and hearing Cartwright himself. They reported in favor of sending another commission to New England, Lord Arlington actively supporting the proposal; and in April and May, 1672, the king almost reached the point of naming the commissioners. But further steps were prevented by the outbreak of the third war with Holland and the fall of the Cabal ministry which was connected with that event.[2]

During the Dutch war the efforts of the petitioners were suspended, but as soon as it closed they were resumed. In the spring of 1675, both Mason and Gorges were repeatedly before the committee for trade and plantations, and, with a view to the appointment of a general governor for New England, they offered to resign their patents and take others with less privilege. This, of course, would have been a possible result only in the case of Gorges. A long paper was presented by Mason in which a possible program for another royal commission was fully discussed. After this had been heard the committee referred the question of title to the law officers of the crown for report, and the question

[1] Colonial Papers, 1669–1674, 54, 171; Evelyn, Diary, II. 342.

[2] Colonial Papers, *ibid.* 208, 232, 244.

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of the customs in New England to the commissioners of the customs.[1] The reports of both were unfavorable to Massachusetts, that of the law officers being to the effect that the titles of Mason and Gorges were good.

The complaints of merchants[2] and the report of the commissioners of the customs directed attention closely to the independent course which Massachusetts was still pursuing in the matter of trade. In Massachusetts itself the commercial spirit was steadily growing, and with it went a decline in religious fervor. The growth of sentiment in favor of the so-called halfway covenant was one of the phases of this development. The division of which these were symptoms did not at this time seriously affect the deputies, because the great majority of the members of that house came from the small towns of the interior. On the other hand, the homes of a large proportion of the magistrates were in the coast towns, and they felt the influence of the dawning secular spirit. Occasional journeys and periods of residence in England broadened their views and gave rise to interests which were less exalted and more worldly than those of their fathers had been. For this reason waverers like Bradstreet, Stoughton, and Dudley continued to exert a growing influence among the magistrates. They helped to keep the colony quiet, and to prevent any attempt at revolt.[3]

Among the councillors of the king the idea of sending another commission to New England seems to have been uppermost until near the close of 1675. On December 2, after considerable delay, due apparently to negotiations with Spain over damages for the seizure of two ships and with France over relations at Saint Christophers, the committee of trade told Mason that, if he would state his case, they would submit it to the king and advise that Massachusetts be

[1] Colonial Papers, 1675–1676, 200, 211, 223, 231, 235; Jenness, Transcripts of New Hampshire Documents, 54; Evelyn, II. 346.

[2] See a remarkably virulent paper by one Captain Wyborne, which was submitted by Mason and read at the committee of trade, December 2, 1675. Colonial Papers, 1675–1676, 306–308.

[3] For quotations indicating the extent to which individuals, during the decade after the Restoration, felt that a revolt in New England might be possible, see Toppan, Randolph, I. 41.

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required to send agents. To the plan of another royal commission they expressed themselves as opposed, because of its expense, the uncertainty of its success, and the danger that it would cause affront on the ground that it would seem like awarding execution on the New England people before they were heard. During the week of December 20, the petitions and the report to the king were prepared, as well as a general circular letter on the subject of the acts of trade.[1] Additional information concerning the attitude of Massachusetts toward the acts of trade, which was given by the merchants early in the following year,[2] fixed the determination of the board and privy council to act. It was resolved to send the summons, not, however, merely in written form, as hitherto, but to transmit it through the hands of an agent specially appointed and despatched for the purpose. Edward Randolph, with whose subsequent career as a customs official in New England we are already familiar, was selected for this duty; and thus began a connection with the colonies which was to last during the remainder of his life.

The undoubted purpose of the government in adopting this measure was to reopen the entire question of the relations between itself and Massachusetts. Its real desire was that the agents who might be sent to England should be given full authority to discuss all the questions at issue and receive the will of the king concerning them. But the most tangible among these questions was the boundary dispute with Mason and Gorges. It was the question on which an appeal would most naturally be taken. For this reason, among others, the English officials, who for some time had been in doubt respecting the best way in which to approach Massachusetts, decided that it should be brought prominently to the front. In the letter from the king to the colony, which Randolph was to deliver to the governor and council[3] at Boston, no reference was made to any other question save that of the northern boundary. Upon this subject precise language was used. "Therefore," ran the letter, "Wee doe, by the advice of our said Council, hereby

[1] Colonial Papers, 1675–1676, 308, 319, 322; Toppan, I. 45 n.
[2] Col. Papers, 1675–1676, 341, 347, 350, 361. [3] Toppan, II. 192.

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command that you send over agents to appear before Us, in six months after your Receipt of these Our Letters, who, being fully Instructed, and sufficiently Informed to answer for you, may receive Our Royal Determination in this matter depending for Judgment before Us." Copies of the petitions which Gorges and Mason had presented to the king were enclosed with the royal missive, and the intention was expressed that a decision should not be reached until both sides had been fully heard. From this language Massachusetts would be justified in inferring that she was summoned to answer the complaint of Gorges and Mason and that alone. But in the background was the consciousness of her whole past history, of the complaints which had been made to the Restoration government, of the contents of the king's letters, and of the doings of the royal commission.

Randolph arrived at Boston in June, 1676, when the war with Philip was approaching its later stages. The letter which he brought from the king required that the agents should be sent within six months after the receipt of the missive itself. Since Randolph had been commissioned to bring back to the king the answer of the Massachusetts government and a report of its proceedings, the request was made that the letter should be read in open and full council and that Randolph might be present at the time. In addition to delivering the letter and receiving the reply, Randolph was instructed to remain a month in New England and inform himself, so far as possible, concerning the laws, churches, means of defence, boundaries, taxes and revenue, trade, and manufactures of those colonies. He was also to inquire respecting their relations with one another and their attitude toward the home government. Upon these matters he was to present a report[1] to the king. To aid in his inquiries Randolph was given certain rough estimates bearing on the topography, resources, and life of New England. This clearly indicates that the crown contemplated something far wider in its bearing than the adjustment of the claims of Mason and Gorges. Randolph was a professional lawyer. He had acted on one or two occasions as an agent

[1] Toppan, II. 192–201 ; Colonial Papers, 1675–1676, 358, 361, 362.

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in purchasing timber for the royal navy. What other posts he had held the scanty information at our command concerning his earlier life makes it impossible to state. But he had become acquainted with a number of men who were prominent in public life, and to them he seemed well qualified for the mission on which he was sent. But of special value to Randolph was his connection with Sir Robert Southwell, Robert Tufton Mason, and Sir Robert Sawyer. The first of these, in or about 1675, succeeded John Locke as secretary to the committee of trade and plantations; while to the second, with whom Randolph was remotely connected by marriage, he owed in part his earlier advancement. Later Sir Robert Sawyer, as attorney general, was a principal instrument in executing the plans which Randolph formed against Massachusetts. All were typical lawyers and officials of the period of the later Stuarts. Mason's influence doubtless contributed strongly toward procuring for Randolph the agency to New England. He brought letters from Mason to friends in the colonies. The Massachusetts authorities at once spoke of him contemptuously as Mason's agent. In this designation there was an element of truth, and the opinion from which it sprang was to an extent confirmed by the partisan attitude which Randolph presently assumed toward the colony which he was appointed to visit. He became the mouthpiece of all the enemies of Massachusetts, both in the colony and in England. During the month of his sojourn in the country he was busy collecting information, but it mainly came from the friends of Mason, and some of it was modified by Randolph's own partisan feelings.

But the statement that Randolph was Mason's agent contained only a fraction of the truth. It is true that in this, as in all cases of governmental action, private interests bore a share. Mason and Gorges were seeking their rights through an appeal to the crown. But the more important fact in the case was this, that the crown was using the appeal of Mason and Gorges as a means by which to lead or force the colonies of New England into closer relations with itself. Since the time of their settlement they had existed under a system of separatism

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and of *de facto* self government which was inconsistent with the main trend of events subsequent to the Restoration. Had they been colonies of the Greek city type, they could hardly have been more self-centred or independent of the metropolis. But in reality the British colonial system, like that of all other modern nations, was Roman and feudal, that is provincial, in character, and with the Restoration the forces which were moulding it after this model came permanently into operation. They came necessarily and at once into conflict with the democratic and separatist tendencies which were inherent in colonial life. The central thread of our colonial history is to be found in the record of that conflict. It did not occasion a resort to arms until the final stage was reached. But it was none the less a struggle, fought out in office, council house, and legislature; through orders, instructions, correspondence, and legal opinions; through speeches of governors and addresses of legislatures; by appointments, removals, appropriations, and the withholding of appropriations; by conferences and dissolutions and new elections, — in short, through all the twists and turns of executive and legislative action, prolonged through a century and repeated in nearly twenty distinct jurisdictions.

The story of Randolph's reception by Governor Leverett and the council is too familiar to need extended repetition here. Randolph has given two versions of it, which in substance agree.[1] The governor treated him throughout with haughtiness and contempt. Some of the assistants maintained a similar attitude. Those who were so inclined kept on their hats while the king's letter was being read. At the close of the reading the governor told the council that the matters contained in the letters were inconsiderable, easily answered, and needed no special notice. But in fact they contained the most weighty summons which Massachusetts had ever received, and Randolph told the governor that he was commanded to require an answer. On his second audience, Ran-

[1] Toppan, II. 203, 216. The one is Randolph's letter to Secretary Coventry, written immediately after the event. The other is his "Short Narrative touching the delivery of your Majesties letters . . .," written somewhat later.

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dolph's pride was wounded, not only by being told that he was Mason's agent, but by being informed that the reply to the king's missive would be sent home by some other conveyance and he would receive only a duplicate. Upon this latter point some sharp correspondence passed between Randolph and the governor and Secretary Rawson. After that it was no longer possible that a friendly feeling should ever exist between the parties concerned. Randolph's inquiries brought to his notice the fact that within a few days subsequent to his arrival two vessels with cargoes of liquors had arrived at Boston direct from France, and three from the Canary islands. Reports of other similar arrivals at earlier dates also came to his ears, while he knew not as yet how many vessels from foreign ports had landed at Piscataqua and in the other harbors of Massachusetts. When next he had a private interview with the governor, Randolph called his attention to these violations of the acts of trade. This drew from Leverett a declaration that "the lawes made by your Majestie and your parliament obligeth them in nothing but what consists with the interests of that colony; that the legislative power is and abides in them solely to act and make laws by virtue of a charter from your Majesties royall father, and that all matters in difference are to be concluded by their finall determinations without any appeal . . ."[1] There is no reason to doubt the possibility that such a statement as this was made, for in substance it was consistent with the entire course of the colony's history and with more than one authoritative utterance of its magistrates and clergy.

The last interview which Randolph had with Governor Leverett, just before he sailed for England, revealed again the rooted antipathy of the men. During the past three weeks Randolph had been visiting the settlements on the Piscataqua. There, as elsewhere, he had met the supporters of Mason and had heard their complaints. While at Portsmouth, settlers from Maine had visited him and told him the same tale. Religious and political privileges, they are reported to have said, were denied them, and they were threatened with destruction by the Indians. All besought him to

[1] Toppan, II. 219; Hutchinson Papers, II. 243.

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lay their condition before the king. If we are to trust Randolph's statements, a similar cry was what he chiefly heard in Boston; while Governor Josiah Winslow of Plymouth is said to have expressed great dislike of the attitude of Massachusetts toward its neighbors, toward the king and the acts of trade. Leverett at their last interview called Randolph sharply to task for publishing his errand in the eastern parts, and thus provoking a disturbance and attempting to withdraw the people from their lawful obedience. Randolph was safe in replying that, if he had done anything amiss, the magistrates could doubtless obtain justice by appealing to the king.

In obedience to his instructions Randolph, on his return to England, presented a long report[1] on Massachusetts, the fullest which the home government had yet received concerning that colony. In this report the government of Massachusetts was described; laws of the colony were cited which were alleged to be repugnant to those of England; it was stated that the oaths of allegiance and supremacy were not administered, while the oath of fidelity contained no recognition of the king; the military strength of the colony was estimated; reference was made to its extent and boundaries, to relations with the Indians and with neighboring colonies, to the products and the financial system of the colony, while he closed with a few observations on Plymouth and Connecticut. In this report, as was shown in a reply which was later made to it by the agents of Massachusetts in England,[2] were many exaggerated and erroneous statements, but in most cases these related to details which had no direct bearing on the points at issue. Randolph's bias against Massachusetts was so strong that the historian need not be misled by it. He reflected what from the first had been the point of view of the Gorges-Mason group, intensifying it by his legal acumen and by the determination with which he fixed upon the acts of trade as furnishing ground for the establishment of permanent executive control over Massachusetts. The departure of the

[1] Toppan, II. 225; Hutchinson Papers, II. 210. [2] Toppan, III. 7.

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New England colonies, and of Massachusetts in particular, from the spirit and governmental forms which were favored by English officials was so marked that there was little necessity for even Randolph to exaggerate them in order to produce an impression. The statements which he makes concerning the chief features of the situation are in general agreement with facts and confirmed from other sources.

As soon as Randolph had sailed on his return voyage, a special session of the general court of Massachusetts was called. The clergy were consulted respecting the best way in which to make reply to the complaints of Mason and Gorges. Should it be through agents or by letter?[1] Their advice was that agents should be sent, but that they should be carefully instructed. William Stoughton and Peter Bulkely were appointed agents, and a committee with Simon Bradstreet at its head was appointed to prepare an address to the king. The address dwelt on the sufferings of the colony in the Indian war and on the arguments of the colony in support of its claims to territory north of the Merrimac river. It was accompanied with a full history of the origin of those claims and a statement of the benefits which, it was affirmed, had come to the inhabitants of that region by the assertion of the claims.

To the agents, besides letters to the secretaries of state, two sets[2] of instructions were given. One was signed by the governor and commanded them to act only in matters which related to the claims of Gorges and Mason, and to plead lack of instructions on all other points. The other instructions required them in addition to seek aid from the Earl of Anglesey and other lords of the council in England who were friends of the colony, and, if they found that Mason and Gorges would sell their interests in New England, to buy them out. Thus, in harmony with the literal interpretation which Massachusetts placed upon the king's letter, the agents were to be her attorneys in the suit with Mason and Gorges.

Stoughton and Bulkely arrived in England in January,

[1] Mass. Col. Recs. V. 99, 106.

[2] *Ibid.* 113.

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1677. They very soon found that affairs of much wider scope than the claims of Mason and Gorges were under discussion. Randolph was persistently urging upon the attention of the privy council and the plantation committee the relations of Massachusetts to the crown and to England in all their phases. Moreover, information was sought from him, and attention was paid to his representations.

On May 6 Randolph submitted a paper on the affairs of Massachusetts, which was referred to the privy council, came before the lords of trade and plantations, and with the petitions concerning trade was the subject of extended consideration.[1] In this paper the right of Massachusetts to its charter, and consequently to land and government, was boldly challenged. Justification for this challenge was sought in statements some of which were gross exaggerations. It was declared that the inhabitants of Massachusetts had formed themselves into a commonwealth, denied the right of appeal, and did not administer the oath of allegiance. They had protected the regicides, coined money, put subjects of the king to death for opinion in matters of religion. They had violently opposed the attempts of the royal commissioners to regulate the affairs of New Hampshire, and later by armed force had turned out his Majesty's justices of the peace in Maine. They imposed upon all inhabitants an oath of fidelity to their own government. Finally, by violating the acts of trade, they had monopolized the larger part of the West India traffic and occasioned a loss to the kingdom in customs duties of more than £100,000 a year.

Randolph did not in the least shrink from the practical conclusion to which his charges led. Let Massachusetts, he said, be at once organized as a royal province, and let Sir John Berry, who was then in Virginia as royal commissioner, be sent thither with a military and naval force for the purpose. Liberty of conscience should be granted, and the inhabitants should be confirmed in the possession of their lands and houses on the payment of an easy quit rent. A general pardon should be granted for illegal acts in the past.

[1] Colonial Papers, 1677–1680, 79, 102, 103, 104; Toppan, II. 265–270.

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The persons in the colony who were most eminent for estates and loyalty should be commissioned by the king as a council for the government of the province. The general court, or a representative assembly in any form, should disappear. Those among the present magistrates who showed themselves submissive should be pensioned and receive some title of honor. This was in substance the plan which was put into operation ten years later. Legal obstacles to its immediate execution presently appeared, but it ever remained as the object toward which the policy of many English officials and lawyers of the time was tending.

When the lords of trade and plantations and the privy council came to consider Randolph's paper,[1] they decided that certain parts of it should be laid before the judges for consideration and other parts before the privy council. Those parts which especially concerned the right of the colony to its charter were referred to the judges, together also with the Massachusetts book of laws. Other matters, bearing more closely on conduct under the charter, were referred to the privy council. The laws of Massachusetts were also laid before the attorney general and the solicitor general for their opinion concerning their agreement with the laws of England.

Chief Justices Rainsford and North, the former of King's Bench and the latter of Common Pleas, promptly delivered the opinion which was requested, both concerning the validity of the Massachusetts charter and concerning the right of Massachusetts to New Hampshire and Maine.[2] A hearing of all parties concerned who were in England had been held. The judges pronounced the royal charter of Massachusetts valid, inasmuch as by the indenture of 1628 to Roswell and his associates, the New England council was understood to have granted away all its interest in the lands of that region. Whereupon it was lawful for the king to establish a suitable frame of government, which was done by the charter of 4 Charles I. The judges also made the remarkable declaration, that by their charter the patentees had been made a cor-

[1] Toppan, II. 270, 271; Colonial Papers, 1677–1680, 103.

[2] Colonial Papers, 1677–1680, 102, 103, 104, 118; Palfrey, History of New England, III. 307.

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poration upon the place. Thus the idea that the proceedings of 1635 had dissolved the corporation was laid to rest and for practical purposes it was made clear that the legal residence of the Massachusetts company was in New England. The opinion on both these points vitally affected the program of Randolph. It interposed some serious legal obstacles in the way of its execution.

The opinion of the justices concerning the claims of Mason and Gorges was equally illuminating. At the hearing the agents for Massachusetts, or their counsel, had disclaimed title to the land. Mason and Gorges were convinced by their counsel that they could not claim rights of government under the grants from the New England council. The validity of Gorges' claim to rights of government under the royal charter of 1639 was, however, fully recognized. Such a document the heirs of John Mason could not produce, the conclusion being that rights of government in New Hampshire were not vested in any one save the king. The sophistries of Massachusetts, so far as they affected the settlements on the Piscataqua and in Maine, were swept away by the declaration that its north and south bounds, as indicated in the language of its charter, must follow the course of the rivers, as far as the rivers went, and then be extended by imaginary lines to the South Sea. The effect of this opinion, if followed, was to transfer the boundary dispute from the coast to the region west of the upper course of the Merrimac river.

Sir William Jones, the attorney general, in an opinion [1] delivered somewhat later, went more at length into rights to the soil within Mason's original grant between Salem and the Merrimac river. He showed that the early grants to Mason and Gorges, though under the seal of the New England council, had not been witnessed or recorded, that seizin had not been endorsed on them. Therefore, in his opinion, they would not avail against fifty years of undisturbed possession under the Massachusetts law. In such cases, as suggested by the chief justices, the right to the

[1] Hutchinson, History of Massachusetts, I. 206.

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soil was probably vested in the actual occupiers; although that was a question to be settled in detail by the courts on the place. But it may be said that Mason's lands north of the Merrimac were actually occupied by him and his agents before Massachusetts law was introduced. It is therefore clear, in the light of Jones's opinion, that Mason's territorial claims in New Hampshire were valid.

The attorney general and solicitor general now reported on the laws of Massachusetts, which they found repugnant to those of England or of doubtful validity.[1] Naturally they were ready to discard many or all of the laws which were derived from the Mosaic code. All expressions which referred to the colony as a commonwealth or to the general court as the chief civil power in the commonwealth, they would at once exclude. The failure to provide by law for the administration of the oath of allegiance to the inhabitants was a fatal defect, as was the introduction of clauses into official oaths which tended to limit the obligation of obedience to the king. The law providing for civil marriage, that which prohibited the celebration of Christmas, those which enforced a scrupulous observance of the Sabbath, were condemned. So was that by which the power to coin money was assumed. The fact was noted that Massachusetts had no law respecting high treason, and that military officers were not sworn to obey the king. The laws against heresy also came in for unfavorable comment, as did the acts by which import duties were laid, these being regarded as taxes on English merchants.

In a series[2] of papers which emanated from Randolph and Mason, the claim was still urged that the Massachusetts company was made a corporation resident in England; that it never had *jura regalia*, and therefore could never legally inflict the death penalty or fulfil other higher functions of government. In other words, it was legally no more than any private corporation, or at most, any municipality in England. Furthermore, the claim was urged that, inasmuch as the New England council was in existence when the royal

[1] Colonial Papers, 1677–1680, 140.

[2] *Ibid.* 126–133.

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charter was granted to Massachusetts, rights of government could not have been legally bestowed on the Massachusetts patentees. It was not admitted that the New England council had previously resigned its rights over the territory which was the subject of the Massachusetts grant. If it had not done so, and rights of government had been bestowed on the Massachusetts grantees, two patentees of the crown would have held the right to govern the same territory at the same time — a manifest absurdity. Moreover, the right of Massachusetts to the government could not have originated when the New England council resigned its charter. It was also claimed that the *quo warranto* proceedings of 1635 had effectually dissolved the Massachusetts company. Though these views were not accepted by the English government, they raised questions which had always been of serious import, and involved the source of the opposition against which Massachusetts had always to contend. The men who raised these issues dealt with no "inconsiderable things," and were more than the mere agents of a private land speculator.

Immediately after the opinion of the chief justices had been read before the privy council, the agents from Massachusetts were called in.[1] When questioned in reference to points other than Mason's claim, they plead lack of instructions and said they could answer only as private men. Speaking in that capacity they briefly excused the conduct of the colony or defended it against the charges which had grown out of its alleged treatment of the royal commissioners, of the regicide judges, of the Quakers; its use of the term commonwealth, its neglect of the oath of allegiance, its law against Christmas, its coining of money, levy of customs duties, and violations of the acts of trade. At subsequent hearings the continued grant of special privileges to church members in Massachusetts, after the passage of a law which implied the opposite, was condemned. The agents were told that the laws which were inconsistent with those of England must be repealed; that the acts of trade must be strictly enforced; that Massachusetts, as the condition of receiving a new patent, must beg pardon of the king for coining

[1] Colonial Papers, 1677–1680, 123; Toppan, II. 274–284.

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money. She must also confine herself within the bounds which had lately been specified by the judges, while the rights both to soil and government in regions outside those bounds should be settled under special authority from the king. Touching the statements of the agents concerning defect of powers, they and their principals were informed that the king did not think of treating with his subjects as with foreigners, but that all things which were fit and consistent with his service should be done. The agents thus found themselves forced to answer and receive orders on a multitude of questions concerning which they had no instructions. Their sojourn in England was also indefinitely prolonged. About these difficulties they wrote to Massachusetts.

When the news reached the colony, the general court ordered the oath of fidelity to be taken by all who had not received it, and also that the acts of trade should be faithfully obeyed by all officers who were concerned.[1] The court stated, with its usual self assurance, that it had thought Massachusetts was not bound by the acts because the laws of England did not extend beyond the four seas and the colony was not represented in parliament. Learning, however, the desire of the king, it had ordered them enforced. Consent of the court to their enforcement was regarded as necessary, else liberty and property would be invaded.

The policy of the general court in reference to the eastern settlements was indicated by the despatch of a petition that the four New Hampshire towns might remain under Massachusetts government, and by an instruction to the agents to buy out the claims of the Gorges heirs. This the agents soon did, much to the chagrin of the English authorities. The sum of £1250 was paid. An effort was also made to buy out Mason, but without result.

After some further hearings before the lords of trade and plantations, in which nothing new was brought forward except an emphatic protest from Randolph against the religious test, there was a lull in proceedings until the spring of 1678. Then hearings before the committee of trade were renewed

[1] Mass. Col. Recs. V. 154–164, 193, 200; Palfrey, III. 311 n.

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and the law officers were asked to inspect the charter.[1] The report that the general court had again ordered the oath of fidelity to be taken drew from Randolph additional complaints.[2] These led to the administration of the oath of allegiance to the agents in England. The law officers of the crown, Jones and Winnington, then reported[3] that the *quo warranto* proceedings of 1635 had not dissolved the Massachusetts company, but the maladministration which had followed had been sufficient to justify the forfeiture of its charter. Based on this, a report to the king was prepared by the committee of trade and plantations in favor of the issue of a writ of *quo warranto* against the charter. They also recommended the appointment of Randolph as collector of customs at Boston, and soon after Randolph received the appointment.[4]

As the summer of 1678 passed by without decisive action on the part of Massachusetts, the lords of trade became convinced that a general governor must be appointed. The agents had meanwhile replied, so far as they were able, to the report which Randolph had first presented on New England affairs; also to a long petition and complaint from Randall Holden and John Greene of Warwick, Rhode Island. Considering their business done, they begged to be permitted to return home, but were told that they must remain till a final resolution was reached.[5] They were kept in England until after the outbreak of excitement over the Popish Plot, when, in the fall of 1679, they were allowed to return. The general court had meanwhile ordered the administration of the oath of allegiance to all inhabitants of the colony who were sixteen years of age and over. The official use of the word "commonwealth" was discontinued, and a severe law of treason was passed, which provided that any one who should publish any design against the life or government of the king, whether by writing, preaching, or speaking, should be punished with

[1] Toppan, II. 277–284, 284–318.
[2] Colonial Papers, 1677–1680, 247; Toppan, II. 315.
[3] Palfrey, III. 314, from the Phillips Mss.
[4] Colonial Papers, 1677–1680, 253; Toppan, III. 2–6, 19.
[5] Colonial Papers, 1677–1680, 261, 269, 275–280; Toppan, III. 7.

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death. Further than this the court showed no inclination of going.[1]

The agents, on their return, took with them a letter from the king, in which the court was commanded to send other duly instructed agents[2] in six months after the receipt of the letter. Though a degree of satisfaction was expressed with the steps which Massachusetts had taken to conform with the desires of the home government, much more still remained to be done. By this letter the colony was required to admit to the suffrage all men who were ratable at 10*s*.,[3] that the full number of eighteen assistants should be elected, that all commissions should be issued and all judicial proceedings conducted in the name of the king. Disapproval of the purchase of Maine was expressed, and Massachusetts was told to stand ready, on reimbursement by the crown of what it had paid, to deliver up the deeds which it held for that province. All commissions which ran into New Hampshire were declared to be void, and the statement was made that the king was considering the reorganization of its government.

In the election of May, 1679, the moderate party in Massachusetts won a victory. Bradstreet was chosen governor in the place of Leverett. In the session of February, 1680, some further concessions were made.[4] A form of commission for military officers was prepared by which they were authorized to act "in his Majesty's name." Provision was made for the election of eighteen assistants. Commissions to the four New Hampshire towns were withdrawn. As Massachusetts considered herself proprietor of Maine, with the powers which Gorges had formerly possessed, an order was now passed for the establishment there of government for one year, under a president, justices, and other officers, as provided in Gorges's patent. The officials were to be com-

[1] Mass. Col. Recs. V. 192 *et seq.*

[2] Hutchinson Coll. II. 257; Toppan, III. 44, 48.

[3] This meant at a single rate, for Randolph later advised that a printed order from the king should be sent over, requiring that all persons, ratable at 10*s*. upon a single rate, having taken the oath of allegiance, should be *ipso facto* freemen. Toppan, III. 68.

[4] Mass. Col. Recs. V. 210, 261, 266.

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missioned under the seal of Massachusetts.[1] It however remained true that rights of government could not be transferred by purchase and sale. The crown took no steps to confer governmental rights in Maine on the colony of Massachusetts. In view of this fact the exercise of such powers in Maine was of very doubtful legality, and that defect attached to them until after the revocation of the Massachusetts charter.

The command to once more send agents to England and to change the law concerning the suffrage caused the general court the greatest perplexity.[2] The serious consideration of the matter was postponed until the session of May, 1680. The court even then delayed long over its reply. Soon after the beginning of the session it sent a letter to the Earl of Sunderland, stating what had been done by the February court, and that the inclemency of the season had prevented many from attending; that for this reason the remaining commands of the king's letter had been postponed until the present court; but further reply, they said, was prevented by the sudden departure of the ship on which this letter was sent. The court prolonged its session until June 11, when another letter was sent to Sunderland.[3] In addition to what had been stated before, this letter informed him that a committee had been appointed to examine the laws of the colony preparatory to the repeal of those which were found repugnant to the statutes of England. They affirmed that, in regard to liberty of conscience, no occasion for complaint should be given to Protestant dissenters who remained peaceable; but this privilege must not be understood to extend to Quakers and to other notorious heretics. The purchase of Maine was defended, as was also the existing law concerning the suffrage, and the latter was so interpreted as not to include the Anglicans among the heterodox. Various excuses were offered for the delay in sending over agents, among them being the financial straits to which the colony had been reduced by the Indian war, and the report that the English government was occupied with other matters.

[1] Mass. Col. Recs. V. 263.

[2] Palfrey, III, 334.

[3] Mass. Col. Recs. V. 287 *et seq.*

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In September, 1680, the king wrote again to Massachusetts in a strain of great irritation, commanding that within three months after the receipt of his letter agents should be sent to England fully instructed, not only in reference to the settlement of affairs in Massachusetts, but concerning the claim which Mason was now urging to territory between the Naumkeag and Merrimac rivers. This letter was brought over by Mason, who now came to New England to support in person his various territorial claims. A special session of the general court was called, January 4, 1681,[1] and the letter was read before this body. The brief entries which follow in the court minutes show that daily sessions for more than a week were occupied with debates on the perplexing situation with which the colony was confronted. Much attention, we are told, was also paid to the revision of the laws, with the view of eliminating, if possible, the provisions to which the law officers of the crown had objected. The debates were continued through an adjourned session in March, and at the regular court of election in May, 1681. Some changes in the laws were agreed to, among which was the omission of the act against observing Christmas, and the repeal of the law which provided that Quakers who returned to the colony after banishment should be put to death.

The selection and appointment of agents gave rise to other difficulties. If, twenty years before, this service was considered a thankless task, much more was it so now. Algerine pirates had recently captured William Harris of Providence, as he was on a voyage to Europe, and this circumstance suggested other perils than those which the agents would have to meet when once they should reach England and attempt to satisfy both the demands of the home government and the claims of the colonists. William Stoughton and Samuel Nowell were first selected, but Stoughton did not desire to repeat his former experience as agent and declined the appointment. John Richards, a magistrate and man of prominence among the merchants of Boston, was chosen in his place. A letter was then written to Sir Lionel Jenkins,[2]

[1] Mass. Col. Recs. V. 302, 312.

[2] *Ibid.* 311.

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explaining in part what had already been done and pleading excuses for delay. But still the agents were not sent.

Randolph, meantime, had returned to England after his first year's residence at Boston as customs officer. His mind was filled with details of the obstructive tactics and the spirit of opposition which he had met with in Massachusetts. These he poured into the ears of the crown officials, urging *quo warranto* proceedings and the recall of the charter as the only sufficient remedy for the evil. Massachusetts, he said, should then be governed by a commission, like that which had recently been appointed for New Hampshire, until the time should come for the despatch of some royal appointee — Lord Culpeper, for example — as governor. While Randolph was in England the letter from the general court to Jenkins arrived, but not the agents. An order in council was accordingly issued in which, though it directly related to the encouragement of Randolph as customs officer and to measures for the enforcement of the acts of trade, expressed strong doubt of the truth of the excuses for delay in the despatch of agents. The order was accompanied by a long letter,[1] drafted by the lords of trade, in which, after reviewing in severe terms the obstructionist tactics of Massachusetts as practised in 1635 and continuously since the Restoration, denouncing them as "irregularities, crimes, and misdemeanors," the colony was charged to forthwith send over fully instructed agents, in default whereof at the next Trinity term *quo warranto* proceedings would be instituted in the King's Bench. This letter, the spirit of which he could fully approve, Randolph brought to Boston on his return at the close of 1681.

The magistrates and elders now saw that further delay would be impossible, and the general court was called together at the middle of February, 1682. The agents were at last appointed, Joseph Dudley taking the place to which Nowell had previously been assigned.[2] With this appointment Dudley was fairly launched upon his conspicuous career as a moderate in Massachusetts politics, an attitude in

[1] Colonial Papers, 1681–1685, 128, 129 (October 21, 1681). This letter is printed in full in Chalmers, Annals, 443. [2] Mass. Col. Recs. V. 333, 346.

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which he was confirmed by the experience that he was now to have in England. Detailed instructions were given to the agents, they being directed to reply to all the charges which had been made in the letter that had just been received. In reference to the coining of money they were to plead necessity and seek the king's pardon for offending against the law. They were also to admit that in some cases the colony rate of one penny in the pound had been levied on non-residents, but were also to claim that this was necessary as a means of providing for defence. In general the circumstances of their position as colonists should be plead in extenuation of any departures from the strict terms of the charter. They were to state that no law had ever been passed prohibiting Anglican worship in the colony, and none then existed against Baptists, while the earlier proceedings against Quakers had received the approval of the king. It was asserted that others than Congregationalists were admitted as freemen, and the belief was expressed that under the charter the court might admit whom it chose into the company. The agents were ordered to state that all due provision had been made for the enforcement of the acts of trade, and they were to explain the court charges imposed upon Randolph when he insisted that extra sessions should be called to try revenue cases. They were instructed to insist that appeals would be an intolerable burden. The course which Massachusetts had followed in Maine should be defended, and the agents should insist that, if trials of suits arising out of Mason's claim [1] to land south of the Merrimac river became necessary, they should be held in Massachusetts. At the close of the instructions the agents were required not to consent to anything which might infringe the liberties granted in the charter, and if anything was proposed which implied this they were ordered to plead lack of power. This brought the negotiation — for such it essentially was — back to the point where all the earlier efforts which had been made to reach an understanding had broken down.

[1] A strong address from many of those who were affected by the claim was at this time sent to the king. Mass. Recs. V. 334. Mason's hopes in this direction were in the end totally defeated.

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When, in August, 1682, Dudley and Richards arrived in England and presented the defence[1] of the colony as they had been instructed, it was declared to be unsatisfactory. Randolph had in the meantime kept up his correspondence, with its usual burden of accusation, and had actually filed with the English authorities a series of articles[2] against the general court of Massachusetts. When, therefore, the agents were told that they must procure additional powers or suit against the charter would be at once[3] begun, Randolph was summoned to England to aid in the prosecution.

The agents immediately informed the general court of the attitude of the home government. A special session of the court was called, February 7, 1683,[4] and the questions at issue were again debated at length. A new set of instructions to the agents was prepared, and more letters were sent. But they implied no change in the situation. The burden of them all was that the government of Massachusetts was satisfactory to its inhabitants, and while they were willing to submit to such regulations as would bring its administration into agreement with the charter, beyond that they would not willingly go. To any essential change of system they would not consent. In the instructions this appeared with the utmost clearness. "Whereas, in our commission & power sent to you our general limitation is the saving to us the main ends of our coming over into this wilderness, you are hereby principally to understand our liberties & privileges in matters of religion & worship of God, which you are therefore in no wise to consent to any infringement of." They were also not to consent to appeals, but to refer such decision of the home government to the general court. In regard to the admission of freemen, the general court insisted that it had complied with the king's demands, and the agents should consent to no modification of the law on that point. They were not to agree to any change in the organization of the

[1] Colonial Papers, 1681–1685, 288. The answer is printed in full in Chalmers, Annals, 450.

[2] Hutchinson Papers, II. 266. Toppan, III. 130.

[3] Colonial Papers, 1681–1685, 296 (September 20, 1682).

[4] Mass. Col. Recs. V. 382–392.

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general court or to the removal of the seat of government. These instructions meant that a voluntary abandonment of the system on which the colony had been founded was not to be expected. In a letter the agents were told that they might surrender Maine, if that would save the charter, but they were not to consider themselves empowered to answer a *quo warranto*.

Late in the spring of 1683, Randolph arrived again in England. He was at once ordered to attend the attorney general with proofs and charges.[1] He submitted twelve charges, among them being the allegation that the colony had passed laws repugnant to those of England, that it had levied taxes on non-freemen and customs duties on goods from England, that an oath of fidelity had been imposed notwithstanding the orders of the king to the contrary, that the right of appeals was denied, that they coined money, that the execution of the laws of trade was opposed, that members of the Church of England were discountenanced and were forced to attend the religious meetings which alone were recognized as lawful in the colony. The resolve of the government had already been taken, and before Randolph had been in London a month Attorney General Thomas Jones filed an information in the nature of a writ of *quo warranto*,[2] addressed through the sheriff of London to the magistrates of the Massachusetts company, commanding them to appear the next Michaelmas term to show by what warrant they enjoyed certain franchises, whether in the kingdom of England or in parts across sea. Some three weeks later Randolph was appointed messenger to take the information to Massachusetts, while at the same time the agents were excused from further attendance. Randolph was furnished with two hundred copies of a royal declaration to the effect that in Massachusetts[3] private rights and property would be respected, and if submission was made, only liberal regulations of the charter would be enforced.

[1] Colonial Papers, 1681–1685, 434, 440, 445; Palfrey, III. 375; Chalmers, Annals, 462.

[2] Mass. Col. Recs. V. 421, 423. The date of the information was June 27.

[3] Colonial Papers, 1681–1685, 453, 456.

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Randolph arrived in Boston on October 26. On November 7, less than two weeks after his arrival, the general court was summoned. At first the magistrates voted in favor of submission, but to this the deputies refused to agree, and defended this attitude in a long series of arguments, the extant statement of which is supposed to be from the pen of Increase Mather.[1] The only positive action taken was the appointment of Robert Humphreys,[2] a London barrister, as attorney for the colony, "to save default and outlawry for the present." He was instructed to delay action as long as possible, to question the jurisdiction of King's Bench over franchises exercised in America, and the authority of the sheriff of London to serve a writ on persons who were never inhabitants of England. He was also to show that the writ was not served on the parties concerned until the time of appearance was past. The last mentioned point was a most important one, and, as the event proved, effectively blocked procedure under the *quo warranto*. The time set for the return of the writ at Westminster was early in November, a date which had already arrived or was past when the general court was called together and the writ was laid before it.

As soon as the decision of the general court was reached not to make submission, Randolph started on his return voyage to England. He arrived there and reported the failure of his errand about the middle of February, 1684.[3] His report was referred, through the committee of trade and plantations, to the attorney general, who was now Sir Robert Sawyer. On May 13 Sawyer reported[4] that the *quo warranto* had been drawn in the ordinary form, but had not been delivered until after the return of the writ was out; because of this, and of doubt whether notice could be taken of New England because it was outside the bailiwick of the sheriff of London, a return could not be made. "I think," continued Sawyer, "that the best way to reach them will be by a

[1] 3 Mass. Hist. Colls. I. 74; Palfrey, III. 380.
[2] Colonial Papers, 1681–1685, 587; Mass. Recs. V. 424, 425.
[3] Colonial Papers, 1681–1685, 587, 599, 601.
[4] *Ibid.* 631; Toppan, III. 297.

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scire facias against the Company to repeal the patent, and upon a *nihil* returned by the Sheriff of London, a second special writ being directed to Mr. Randolph, who shall give notice in time before the return of the writ who may make return thereof."

Under the writ of *scire facias*, according to the rules of procedure which then obtained, after the sheriff or his agent had twice returned *nihil*, and that too within a brief period, the prosecutor could enter a rule for the defendant to answer within eight days, or judgment would be entered by default to avoid the patent.[1] If the defendant made default, the charter could be voided without his receiving any notice. It was for this reason that Attorney General Sawyer, as soon as he was informed of the failure of Randolph's attempt to serve the *quo warranto* in time for a legal return, advised that the process of *scire facias* should be resorted to. This course the government adopted, and the Massachusetts charter was cancelled. The final decree was entered October 13, 1684.

The words of the decree, which was entered after the second return of *nihil*, were as follows: "Whereupon the aforesaid Robert Sawyer knight, the king's Attorney General who prosecutes this cause for our Sovereign Lord the King, prayed Judgment and that the said Letters Patents, soe as aforesaid to the said Governor and Company made and granted, the Inrollment of the same, for the reasons aforesaid forfeited; be Cancelled, vacated and annihilated and restored into the Chancery of our said Sovereign Lord the king there to be Cancelled. And the said Governor and Company, the fourth Day of the Plea of Eight daies of the holy Tranity above menconed, before the king in his said Chancery here, That is to say att Westminster aforesaid, being solemnly called, did not appeare but made default, whose default is re-

[1] Foster, Writ of Scire Facias. The two returns of *nihil* in the case of the Crown *vs.* Massachusetts will be found incorporated in the body of the judgment, 4 Mass. Hist. Colls. II. 262, 278. See also an Order of Chancery, June 2, 1684, that judgment should be entered against the defendants in the case of the Massachusetts charter, if they did not appear and plead on the first day of the next term. Toppan, III. 307, 308.

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corded by the said Court here. Therefore by the said Court here itt is adjudged that the aforesaid Letters Patents . . . and the inrollment thereof be vacated, Cancelled and annihilated, and into the said Court restored there to be cancelled." The main features of the process appear in the language of the decree. It was summary and the decree was entered after default. But it was effective, and by no other judicial process was any corporation resident in America reached during that period of colonial history.

When, two years later, Randolph was charged with the service of *quo warranto* writs against Rhode Island and Connecticut, he wrote, "Now to the intent the time limited for serving the writ upon the Governors and Companys of those Collonys may not be lapsed by delays and the difficulties of a winter voyage, and his Majesty's prosecutions thereby rendered ineffectual, as it was in serving the writ of *quo warranto* against the Boston charter, it is humbly proposed, that in three weeks time at farthest a ship is bound from London directly to New England, by which the *quo warranto* may be sent and served accordingly, to the end there may be no delays made in that affair."[1]

The charges which were selected from the list that Randolph submitted, and which appear in the decree of Chancery as those upon which the charter was declared void, were these: that taxes had been unlawfully levied on non-freemen and non-residents, that money had been coined, and that an oath of fidelity had been administered. From the political and historical standpoint these were not the most important among the offences of Massachusetts. But they were probably regarded as in a peculiar sense transcending the rights of a private corporation, and in this light the lawyers of the time always regarded Massachusetts. For this reason it is likely that they were selected, and they were sufficient for the purpose.

The immediate effect of the decree, as soon as the home government took the steps required for its execution, was to dissolve the general court and bring it totally and forever to

[1] R. I. Col. Recs. III. 177.

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an end. With it disappeared the freemen, the system of elections, and much of the official system which had been developed within the colony. Local government in the towns was the part which least felt the shock. The completeness of the change was due to the fact that, owing to the peculiar origin of the corporate colony, the corporation and the colony had been merged and had become one and the same structure. Therefore the destruction of the former also effectually wrecked the latter. Had the corporation continued resident in England, its dissolution would not necessarily have affected an assembly which it might have granted to its colony. That would have remained as a concession which the power that succeeded to the corporation would have been bound in the interest of liberty to continue in existence. When the charter of a corporate colony was taken away, that result would not follow without an act creating the general court or assembly anew. That was a penalty which the corporate colony was bound to pay as the price of its earlier and more complete independence, and Massachusetts was made to feel the reverse and humiliation to the full. The struggle had been a long one, and the triumph of the home government seemed correspondingly great. The citadel of colonial independency had fallen. The path toward consolidation and the establishment of vigorous administrative control seemed open, and the group of officials who supported this policy and who had won the battle were not slow to enforce the changes which it implied.

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CHAPTER XI

THE BEGINNINGS OF ROYAL GOVERNMENT IN NEW HAMPSHIRE

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SOME two years elapsed after the opinions had been delivered in England which established the law of the case, before decisive steps were taken to set up a royal government over the four towns of New Hampshire. These towns had felt the influence of the proprietary system only to a very slight extent, and for more than a generation they had been entirely free from it. Pressure from the home government they had felt only during the brief visit of the royal commissioners. When Massachusetts brought the settlements beneath her sway, the formal consent of the inhabitants had been obtained, and the majority had doubtless joined with heartiness in giving it. An Anglican minority, however, had submitted unwillingly to Puritan rule, and were ready to welcome its cessation, if that were not to result in too great restriction of local independence. But social conditions in the New Hampshire towns were essentially the same as those in Massachusetts, and the mild infusion of Anglicanism made only a slight difference. No more robust example of the Puritan clergyman was to be found at that time in New England than was the Rev. Joshua Moody of Portsmouth, and his influence was such that the royal officials called him the archbishop. They found that he virtually, if not actually, held a seat in the council. Vaughan, Weare, Waldron, and many other settlers shared in his spirit. They had been content under Massachusetts government and had participated in its benefits. Not the least among these was the sense of security which came from connection with the larger colony, in the case of possible conflicts with the Indians.[1] Now, as the

[1] This was expressed in the first address of the president and council to the king. New Hampshire State Papers, XIX. 672.

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result of a judicial opinion delivered in England, they were to be transferred under royal control. At the same time the active assertion of the territorial claims of Mason was to be revived, though he legally possessed no rights of government with which to enforce them. Because of the character of Mason himself and of the chief agent whom the English government employed, the change was for a time fraught with serious consequences to the colonists who were immediately concerned. It also furnished an object lesson to other New Englanders which was little likely to prepossess them in favor of the régime which Edward Randolph was so ardently laboring to establish.

As a temporary measure the English government, in 1679, issued a commission to John Cutt,[1] a prominent and respected merchant of Portsmouth, as president, to administer the affairs of the province with the assistance of a council. The president had long been active as a local official under the Massachusetts government. So also had the members of the council, who in each case stood among the leading men in their towns. Richard Martyn and William Vaughan of Portsmouth and Richard Waldron of Dover were among the councillors. The spirit of conciliation toward the colonists which was indicated in the make-up of the council was further shown in the provision that within three months an assembly should be called. Such regulations about elections should be enforced as seemed most convenient. The usual provisions for securing the rights and authority of the crown were included in the commission, especially those for appeals in both criminal and civil cases, for the submission of the acts of assembly to the crown, and for the administration of the oath of allegiance to all officials. Though these provisions were customary in royal commissions, it is needless to say that they appeared strange and novel in New England. The king's seal was to be used in the administration of justice. Authority and direction were also given in the commission respecting the exercise of the most important powers of government. The president and

[1] N. H. Provincial Papers, I. 373.

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council were also informed that Mason had agreed to grant full titles to all landholders in the province for the improved land which they held, and to retain the unimproved land for himself, to be disposed of in the future. He had also agreed not to demand a rent in excess of 6*d.* in the pound on the value of real estate. No claims for rent prior to June 12, 1680, should be urged. If any of the inhabitants should refuse to agree to these terms, the president and council should, if possible, effect a settlement, but if not, the evidences and opinions in the case should be sent to England. Though the proprietor was left with his territorial rights, the crown could not permit their exercise except under certain conditions and limitations which were prescribed by itself.

As soon as this government went into operation, it became evident that affairs would be conducted to a large extent according to New England traditions. In March, 1680, the general assembly [1] met at Portsmouth. It was chosen by electors, all of whom, as specified in the summons which was issued by the president and council, were named in the writs. To all, except a few from Dover, the oath of allegiance was administered. The naming of electors in the writs was a provincial procedure, and subversive of local rights in the towns. But it was intended, we may suppose, to exclude the votes of those who were not in agreement with the Massachusetts party in the province. The first business of the assembly was to send a letter to Massachusetts expressing gratitude for the protection which had been received from that colony in the past, and stating that separation from her had been due to other causes than dissatisfaction.

The assembly then passed a considerable list of general laws, the first which had ever been enacted by a New Hampshire legislature. Among them appears the characteristic criminal legislation of the Puritan commonwealths, passed with slight regard to the provisions of English law on the same subjects. The township system was also confirmed,

[1] N. H. Provincial Papers, I. 383, 408, 410; Belknap, History of New Hampshire, I. 177; Laws of New Hampshire, I. 9, 11, 12–41.

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together with all town grants and other grants of land and rights within the province. Controversies involving titles to land, it was declared, should be tried before juries elected by the freemen of the towns. These enactments were sure to be regarded by Mason as inconsistent with his title as proprietor, while the method of selecting jurymen here prescribed was quite inconsistent with English law and practice. Provision was made for annual assemblies — which should also act as a court of appeal — and for an inferior court held by the president and council. It should meet three times annually, sitting in Dover, Hampton, and Portsmouth in succession. In the assembly, the council, and on the bench the president, or his deputy, should have the casting vote in cases of a tie. The laws relating to courts and officers by which the towns had previously been governed, so far as they were not repugnant to the laws of England, should be continued in force. Provision was made for a franchise which was based chiefly on the freehold, though also with clauses requiring that the recipients should be Protestants who were moral in life and who should have taken the oath of allegiance. The method of levying and collecting the province rate, in the usual form of the combined personal and property tax, was prescribed. Richard Martyn, a member of the council and an active defender of the rights of the colonists, was appointed treasurer.[1] A beginning was made in limiting fees by prescribing those of the marshal or sheriff.

In December, 1680, Mason and Richard Chamberlain appeared in the province.[2] The latter was an English barrister, a friend of Mason, and had been appointed secretary to the council of New Hampshire. Mason brought with him a warrant from the king, requiring that he should be admitted to a seat in the council. This was obeyed. Chamberlain states in letters to Blathwayt and to the lords of trade that the council deliberated for three days before they would permit him to begin performing duties of his office as secre-

[1] N. H. Provincial Papers, I. 474.

[2] Colonial Papers, 1677–1680, 587, 588, 592, 608; N. H. Provincial Papers, I. 420.

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tary. It seems that the members of the council, supported by Moody, insisted that Chamberlain should take an oath of secrecy. The object of this was to prevent his communicating the business of the council to the authorities in England. But one of the principal injunctions which had been laid upon him by those same English officials was to write home frequently and to send accounts of all the business done in his office and of all orders and papers which were registered there. Therefore Chamberlain refused to take the oath. "I told them," he wrote later to Blathwayt, "that I intended to be guided alike by my duty to the council here and to the ancient laws of England. As a compromise, I suggested that the matter might stand over till I received instructions from England, but after that I was set on by the whole *posse comitatus* of the council, both ordinary and extraordinary, including Mr. Moody, their archbishop. I positively declared that I neither could nor would derogate from the king's commission. I said just now that Mr. Moody was virtually of the council, and I believe Mr. Mason will inform you of his superintending in all matters public and private, but I confess that I told him he was none of the council. The occasion was upon his inculcation of my oath of secrecy, and his interpretation of the terms of my commission. He resented it so much that I fear I have done my business as a church member." [1] This was the first time that a blow was directly aimed by a royal official and a lawyer at the peculiar function which for so many years the New England clergy had been performing in the councils of their respective colonies. From a statement which was made to the effect that they knew what they had to do, it was conjectured, says Chamberlain, that they debated matters before they came to the sessions.

When finally Chamberlain had been admitted to his office, he requested the books and papers belonging to it, which were in the hands of Elias Stileman, who, when Waldron succeeded Cutt as president, was appointed as his deputy. At first he was told that they had no council book. He asked to have one provided, but he was told that the country was

[1] Colonial Papers, 1681–1685, 48, 49.

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poor. Later, what was apparently a rough draft of the acts and orders of the council was delivered to Chamberlain to transcribe and keep for his own use, while the fair copy was to remain in the possession of Stileman. Stileman was also recorder and clerk of the writs, and retained the papers which were filed in connection with the business of that office. He was at the same time captain of the fort. Here was an accumulation of offices almost as notable as any which we have in the proprietary provinces. But still more was to come. "To make my commission insignificant," writes Chamberlain, "they have appointed three of themselves to be joint secretaries or registrars of the province; Stileman for the matters aforesaid and for Portsmouth and Dover, Samuel Dalton for Hampton and Exeter, and Richard Martyn to take charge of the shipping. I have told the Council that I believe it to be the law that persons who are judges in any court of judicature cannot also be ministers to the same court. It is derogatory to the King's service that the Deputy President of the province and a lawmaker should also hold so mean an office as maker of writs and attachments." Coming to matters of still closer personal interest, the secretary wrote: "My fees are so small that they are not worth the naming. My salary and perquisites are ordered to be settled according to the measure of other colonies, but the authorities here do not see fit to do it, so that hitherto I hold but the name of an office, the profits being shared by the persons before named. I beg that the King will fix my salary and order the Council to pay it, and that the issue of writs and other due perquisites may be attached to my office." The first royal governor was soon to find that the climate of New Hampshire was well adapted for freezing out royal officials, while Chamberlain was finding that its inhabitants were adepts in the art of starving them out. He was among the first, but was by no means the last, of that class in the colonies to feel pressure of this sort. The customs officials, beginning with Randolph, were more fortunate in having their salaries guarantied by the home government.

Sessions of the assembly were held in March, and again at intervals until December, 1680. It also acted as a court of

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appeals, Chamberlain calling attention to the fact that provision for this was not made in the commission of government.[1] Chamberlain also states that, with Mason, he attended the election at Dover for deputies to the second assembly, which met in March, 1681.[2] "At that time," he says, "several demanded their liberty to vote, which was denied by Major Walderne, our present President. It was then said that but thirty were allowed to vote, and Mr. Mason, when he withdrew, was followed by many, complaining that a hundred and fifty persons, all payers of great taxes, were excluded from voting." Chamberlain reported that it was thought the deputies were nominated by the council, and that it allowed none but whom it pleased to vote at elections.[3]

When the general assembly addressed itself to legislation and to the revision of the laws, the deputies and council apparently sitting in one house, Chamberlain presented objections to the laws which had been passed the previous year. He condemned them as unnecessary because the king had sent over a volume of English statutes, which were ready to their hand. He also objected to them on the ground that they were drawn so largely from the statute book of Massachusetts. "Surely," he said, "it would not please his Majesty that we should cast off obedience to the jurisdiction of Massachusetts, and yet yoke ourselves inseparably under its laws." He finally criticised a number of the laws because they were repugnant to the statutes of England. Upon the necessity of repealing the act conferring these grants he especially insisted. But the arguments of the secretary met with no response.

In point of law the original claim of the Mason family to the ungranted and unimproved land of New Hampshire and to a reasonable quit rent from the granted and improved land was valid. Their right to it was as clear as that of

[1] Laws of New Hampshire, I. 38, 40, 42. Provision for action by the assembly as a court of appeals was made in an act of 1680.

[2] Laws of New Hampshire, I. 43.

[3] The number of voters in Dover who were named in the writs for March, 1680, was sixty-one. Whether the voters were specified in the writs for the assembly of 1681, we are not informed.

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the proprietors of New Jersey to the land of their province. But practically there was an important difference between the position of Robert Mason and that of the New Jersey proprietors. The latter administered the territorial affairs of their province uninterruptedly from the time of their grant. But more than a generation had now passed since members of the family of John Mason had been connected with New Hampshire, except as persistent claimants of its lands and of rights of government over it as well. Their agitation had been carried on in England, and, so far as rights of government were concerned, it had failed. The claims to land had been sustained, and Robert Mason, under authority from the crown, now appeared to realize upon those. It was the first time that one who claimed to be proprietor of New Hampshire had set foot on its soil.[1]

To continue the comparison: the proprietors of New Jersey set up a government of their own, and, whether legally or not, used it as an aid in the administration of their territorial affairs. Mason had no coercive authority. He was forced to depend at the outset on a government which, though organized under royal authority, was in spirit as hostile both to Mason and to the existing colonial policy of England as Massachusetts itself. During a period of forty years the settlers had been making their own terms with the Indians respecting land, or settling within town grants, while the authority for their action was self derived or came from a commission of Massachusetts. We know what difficulty the proprietors of New Jersey met in their efforts to collect rents from settlers who had only just received patents from another source. It was an obstacle which they never overcame, and which almost mastered them when they had to meet it unsupported by rights of government. How then could Mason expect to induce any, except a small minority, of the people of New Hampshire to pay rent to him unless they were compelled to do so? It is reported that Richard Martyn had said that neither the king nor Mason had any

[1] In the volumes of Colonial Papers, 1661–1668, and 1669–1674, may be traced the occasional letters of Nicholas Shapleigh, the agent of Mason in New Hampshire, relative to the latter's interests there.

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more right to land in New Hampshire than Robin Hood, and that the council meant to oppose him. Waldron had warned people in Dover not to accept confirmation of their land from Mason.[1] According to Chamberlain, the council assumed toward Mason the attitude which Martyn said it would, though his statement that the people generally were ready to submit to the proprietor is both improbable and inconsistent with evidence which has survived in the province.

In person and through stewards of his own appointment Mason at once began to urge his claims.[2] The renewal of patents, or taking out of leases, was insisted upon. Rents were demanded and prohibitions to cut firewood or timber were issued. The title of lord proprietor was assumed, to the first word in which designation Mason certainly had no claim. Mason states that he offered to confirm titles on reasonable terms, and that one-half of the inhabitants came to him to have their lands confirmed. Among those who accepted the offer was President Cutt himself. But in the midst of Mason's campaign the president died (March, 1681), and Richard Waldron succeeded to his place. If we are to believe Mason, the agitation against himself originated chiefly in the council, and was led by Waldron and Martyn. But as soon as the people became aware of what was intended, opposition was started in all the towns. Sermons were preached, and both public and personal appeals against Mason were made by members of the council and their supporters. Mason posted declarations charging the councillors with disobedience to the king's commission. Some of those in Dover were torn down by Waldron, and he is said to have threatened Mason's agents with punishment. A proclamation was issued warning all against executing Mason's illegal orders, which were issued under his assumed title of lord proprietor. Local tradition, as set forth by Belknap and others, is to the effect that resistance to Mason was spontaneous and general. It is easily con-

[1] Colonial Papers, 1681–1685, 27, 50.

[2] *Ibid.* 44, 138; Provincial Papers, I. 423, 429; Belknap, I. 182.

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ceivable that both statements, under proper limitations, are true.

From the time when Waldron took office Mason ceased to attend the council, and hostile messages passed between the two parties. The council forbade Mason to proceed in such manner as he was doing, and prepared to transmit complaints to the king. Thereupon Mason himself threatened to appeal to the king, and summoned the president and council to appear within three months in London. An order was then issued for Mason's arrest, but he avoided it and returned to England.[1] These events, together with the reception which Randolph had met when he attempted to seize a vessel for illegal trading, furnish additional evidence that the spirit of New Hampshire was much the same as that of Massachusetts. While the controversy with Mason was in progress, Barefoote and his assistants were again arrested[2] for seizing a vessel without the knowledge of the provincial authorities.

Steps were now taken in England, in the interest of Mason and Randolph, to terminate the existence of the presidency and thus open the way for the fuller assertion of royal control. Chamberlain at this time wrote the letters home from which we have quoted at length. A statement equally unfavorable to the council was also sent, over the signatures[3] of Nicholas Shapleigh, Francis Champernowne, Walter Barefoote, and William Bickham, all of whom were fully identified with the royal and proprietary interest. Mason, on his arrival in England, in addition to his own petition, presented articles against Martyn and Waldron, alleging that they had not taken the oaths of allegiance and that they were opposing royal authority. Even the deceit which Waldron had practised on the Indians at the close of the late war, and which was ultimately to cost him his life, was cited against him.[4] In order the better to secure the establishment of royal government, Mason also agreed to surrender to the crown all the fines and forfeitures, and one-

[1] Colonial Papers, 1681–1685, 45, 54, 138. [2] *Ibid.* 44.
[3] *Ibid.* 52. [4] *Ibid.* 140.

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fifth of the rents and profits, which were his due as proprietor of New Hampshire. These he proposed should be used for the support of royal government in that province. Judging from the reception which Mason's claims had met in the province, the offer could not greatly impoverish the proprietor or enrich the governor for whom its benefits were intended. But the offer was duly accepted by the crown. After examining the acts which had been passed during the administration of Cutt, the committee of trade and plantations voted to recommend that the king disallow them all, on the ground that they were unsatisfactory both in style and matter. Evidence of final action is lacking, as well as proof that the colonists were notified of the fact that the acts had been disallowed. This leaves the validity of the so-called "Cutt code" in doubt. But another recommendation of the committee was surely acted upon. Because of the irregularity of proceedings in New Hampshire, they urged that some one be appointed "to settle the country, with such Commission and Instructions as are usually given to other Governors." On the strength of these representations, Edward Cranfield was appointed royal governor of New Hampshire,[1] March, 1682. After the appointment Mason mortgaged the land of the entire province to the governor for twenty-one years as security for the payment of £150 annually for seven years.

Cranfield, years before, had served as gentleman usher to the king. In 1675 he was appointed head of a commission to bring off the English from Surinam, after that island had finally been surrendered to the Dutch in exchange for New Netherland.[2] The duties which were then imposed upon him he seems to have satisfactorily performed. But we know nothing in his character or previous experience which tended to develop the sympathy and discretion that were needed in the office to which he was now called. Cranfield received to their full extent the powers which the English government was then coming to bestow on royal governors, provision at

[1] *Ibid.* 192, 213: Provincial Papers, I. 433, 454, 465. Only six out of the forty clauses of his instructions are in print. Belknap, I. 189.

[2] Colonial Papers, 1675–1676, 169, 194, 277, 283, 289, 393, 397.

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the same time being made for the continuance of the assembly. As was common at the time, a clause was introduced into the commission to the effect that, until an assembly made provision for an adequate revenue, the existing taxes and imports should continue to be levied. It was a power which the government in New Hampshire found it especially necessary [1] to use. The personnel of the council was not greatly changed. The specifications concerning Mason's claims remained unmodified. The duties, and at the same time the income, of Chamberlain were increased by his appointment as register of deeds and clerk of all the courts of the province. Walter Barefoote, who had been one of the least scrupulous among Randolph's agents, was admitted to the council and made justice of the peace and judge of the court of pleas held at Great island. One Joseph Raines, who was apparently a passionate and brutal man,[2] was appointed sheriff and attorney general. These appointments were indicative of a more strenuous policy on the part of Mason and his adherents. By means of them, offices, as far as possible, were accumulated in the hands of his supporters. The mortgage, to which reference has been made, gave Cranfield a personal interest in the efforts which were now to be renewed for the purpose of extorting a territorial revenue from New Hampshire. The more numerous the suits, the larger would be the fees of the judges and other court officers.

Cranfield at first seems to have been inclined toward friendly relations with the people of New Hampshire.[3] After inquiring into charges which Mason and Randolph had preferred against Waldron and Martyn, though for a long time they had been leaders in opposition to the proprietor's claims, the governor found nothing to convict them of disloyalty. They were therefore restored to the council, from which for a time they had been suspended. He also expressed the belief that Mason had misrepresented both the resources of New Hampshire and the temper of its people. He criticised also the attitude and character of the secretary,

[1] Provincial Papers, I. 440, 475, 488. [2] *Ibid.* 456, 477, 482, 484.

[3] See the remarkable letter of Cranfield, the first which he sent to the lords of trade after his arrival in the province, Colonial Papers, 1681–1685, 312.

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Chamberlain. It seemed to him that the people were loyal to the king, and that what they really desired was a fair trial at law of the questions in controversy. To a judgment reached in that way he believed they would willingly submit. He was clearly of the opinion that any attempt to establish the Church of England in the province would be very grievous to the people, for they were devout and tenacious of their worship.

It is difficult to understand how it was that the man who, on December 1, 1682, expressed such reasonable views, by the close of that very month had totally changed his mind, and was ready to enter upon the most reckless and tyrannical course of policy which was ever followed by an appointee of the crown in the American continental colonies. From Cranfield's letters one would infer that the change was caused by a conviction that the people, combined throughout New England in Congregational churches and under the lead of their ministers, were bent on resisting, or at least thwarting, the plans of the crown.[1] This opinion seemed to be strengthened by evidences which he saw of the impossibility of enforcing the acts of trade in New England. But it will not do to attribute anything like decisive influence over the mind of Cranfield to considerations like these. The colonists, who saw what he did, were convinced that greed was the prime motive of his conduct, as it was also of all his associates and followers. His relations with Mason were so express and intimate as to give unusual strength to this motive and to array them both in a partnership against the people. Cranfield is reported to have said that he came for money and money he would have.[2] When Nathaniel Weare took a petition against Cranfield to England, the governor is reported to have exclaimed that he would get the names of the subscribers, "and it would be the best haul he ever had, for it would be worth £100 a man."[3] The history of his administration, which lasted for about three years, though an unbroken record of vulgar oppression and extortion, is

[1] Colonial Papers, 1681–1685, 388, 449, 522.

[2] Provincial Papers, I. 526, 531; Vaughan's Journal.

[3] *Ibid.* I. 563, Deposition of Peter Coffin.

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interesting as an illustration of the lengths to which it was possible for a royal governor to go before, through process of appeal, his career could be checked.

Under Cranfield New Hampshire had its first experience of disagreements between the governor and assembly, and the exercise by the former of the right of dissolution. With his assembly in its first session the governor was on amicable terms. It passed a number of laws, the one of greatest immediate importance transferring the selection of jurors from the freemen of the towns to the sheriff. This necessary act of conformity with English law enabled Cranfield, Mason, and their clique to control the make-up of juries when the time came to bring suits over land titles to trial.[1]

Cranfield's assembly met for its second session in January, 1683. The governor offered a bill for raising a revenue, which the assembly refused to pass. After this they insisted on originating all bills; also on their right to establish courts and nominate judges. These and other bills which were proposed by the assembly the governor said led directly toward independency. He therefore dissolved the assembly, and wrote home that with the assent of the council he should continue the impositions which had been levied since the time of President Cutt.[2]

It was the dissolution of this assembly that occasioned the attempt at an uprising which was led by Edward Gove of Hampton. Gove had been a member of the assembly, and, half crazed by drink and political excitement, he attempted to arouse the inhabitants, especially of his own town and Exeter and Dover, to revolt. He declared that the governor, because he held the office of vice admiral under the Duke of York, would introduce popery; also that his commission was invalid and its powers had been exceeded. A few appeared with him, mounted and under arms. But the militia was called out and the seditious parties were soon induced to disperse or surrender. Gove, with nine others,

[1] Laws of New Hampshire, I. 58–73; Provincial Papers, I. 444.

[2] Colonial Papers, 1681–1685, 373, 388. The order of the governor and council for raising a revenue is printed in N. H. Laws, I. 83, and is dated October 22, 1683.

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was brought to trial for high treason before a special court, of which Richard Waldron was the chief judge. Gove behaved insolently before the court. Though the plea of lunacy was privately urged, he was found guilty and sentenced to be executed. The others were convicted of being accomplices, but were released on security for reappearance, if called for. Gove, in obedience to the reference in the king's commission concerning such cases, was sent to England. There he was imprisoned in the Tower, but finally, through the help of Randolph, was pardoned.[1]

A year passed before the next assembly was called, and by that time passions were so heated that agreement was not to be expected. It was need of revenue which at last forced Cranfield to the unwelcome alternative. Availing himself of rumors of an approaching war, he called an assembly in January, 1684, to meet near his own residence at Great island, and submitted to it a bill to provide for the repair of the fort, for ammunition, and to meet other charges of the government. It had already passed the council. The measure was debated, and then the house adjourned for the night, the members returning up the river to their homes. On the next day they rejected it. The governor then charged them with having consulted Mr. Moody and other enemies of the government, and immediately dissolved the assembly. Imitating the measures of Charles I, Cranfield then procured the appointment of several of the opposition members to the office of constables, in order to prevent their serving in the legislature. In order to escape the duty of serving in this office a fine of £10 must be paid.[2]

When, in the following summer, there were rumors of an Indian outbreak, Cranfield wrote, "We have not twopence in the Treasury, nor one farthing paid since my arrival, though I have pressed earnestly on two Assemblies for money for the support of the Government."[3] The second

[1] Colonial Papers, 1681–1685, 374, 387, 414, 473, 577; Provincial Papers, I. 458, 494; Belknap, I. 193; Dudley Records, 2 Proc. Mass. Hist. Soc. XIII. 255.

[2] Colonial Papers, 1681–1685, 576; Belknap, I. 202; Provincial Papers, I. 526.

[3] Colonial Papers, 1681–1685, 633, 641.

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session to which Cranfield referred was that of May, 1684. But of that he wrote that he did not think it prudent to let them sit, for their humor was the same as when Gove took up arms. "They will not vote twopence for the support of the government," he continued, "and the very rates of Cutt's and Walderne's time have been continued by us according to the Royal Commission, but we do not think it safe to publish it, having no strength to countenance our proceedings." The assembly was called together again in July to pass, at the command of the home government, the Jamaica act against pirates. After this was done it was then dissolved, and no successor was called. In all the assemblies of Cranfield's administration the son of Richard Waldron was speaker, and nearly the same persons were in all cases returned as members. No breach between the executive and the representatives could be more complete than that which developed at this time and under these circumstances in New Hampshire. CHAP. XI.

The relations between Cranfield and his council were of course continuous, and they had an intimate connection with the conflict which he and Mason were waging with the people at large. Though, as has been stated, the changes at first were few, by the time the administration had run half its course the personnel of the council had been almost completely changed. Two members had died; Waldron, Martyn, and Gilman were suspended. Fryer, Eliott, Hinckes,[1] Sherlock, and Francis Champernowne were appointed. By this process the council was filled with persons who either were in league with the governor and Mason, or who would not oppose their policy. From the list of faithful councillors several of the important offices of the province were filled. Either as councillors or justices of the peace, they acted as the principal judges in the quarter sessions of the province. The creation of a political machine like this was a familiar occurrence in the proprietary provinces. To some Anglicans in New Hampshire it was probably welcome. But to the Puritan majority, who under the guidance of

[1] Belknap, I. 198; Colonial Papers, 1681–1685, 577, 633–634. Eliot was later suspended, because he proved unfaithful to the governor's cause.

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Massachusetts had hitherto monopolized political power, it seemed even worse than it was.

The point about which the conflict chiefly raged was the territorial claims of Mason, supported as they were by the interest and authority of the governor. Writs were first issued against Major Waldron, charging him with trespass and with keeping Mason, the proprietor, out of possession of various tracts of land at Dover and other places.[1] Similar process was instituted against Vaughan, Stileman, and the other principal landholders of the province. Waldron at the first trial challenged all the jurors as interested persons, because some of them held leases of Mason and the others lived on land which Mason claimed. To break, if possible, the power of this charge the jurors all took an oath that they were not concerned in the lands in question, and should neither gain nor lose by the cause. Upon this Waldron said aloud to the people who were present, "That this was a leading case, and that if he were cast they must all become tenants to Mason; and that, all persons in the province being interested, none of them could legally be of the jury." After that, as the trial progressed, Waldron produced no evidence and made no defence whatever. The others followed his example.[2]

But this course made no impression on either court or jury. Verdicts favorable to Mason were rendered in every case, and suits were tried in rapid succession. It is stated, on the best authority, that a standing jury was kept for the purpose from month to month. Vaughan, writing in the winter of 1684, says, "The actions go on, and are turned off hand apace, twelve at a clap, after the old manner." Again, early in March, he writes, "The court was adjourned yesterday to the next month; probably that they might levy the executions that are in bank before they cut out any more work."[3] Mason, however, is said to have levied only a small part of the executions to which he became entitled, because

[1] Belknap I. 199; Provincial Papers, I. 467 *et seq.*, 514.

[2] *Ibid.* 503.

[3] *Ibid.* 518, 521, 527, 538, 577. In Colonial Papers, 1681–1685, 742, are several depositions of friends of Mason concerning these trials.

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there were few or none to whom he could sell or lease the lands when they came into his possession. It was indeed publicly stated on his authority that very few came to him to take deeds for land which was already in their possession. With an appearance of fairness Mason offered to waive the advantages which he had gained through favorable judgments, and, under proper security, to submit the cases to trial in Westminster Hall. None, however, except Vaughan, appealed to England, and he lost his case.[1]

Suit was also brought against Richard Martyn, formerly treasurer and one of those whom Cranfield had suspended from the council, for fines and forfeitures which he had received while in office, and judgment with costs was recovered against him for nearly £80. Martyn appealed to Mason as chancellor for relief, and a decree was issued, that the sum should be assessed proportionally upon the surviving members of the late council and the heirs of those who had died. This was afterwards reversed by the king in council.[2] In connection with all the suits which were brought the highest possible rates of fees were collected.

Having assumed practically full legislative power, the governor and council prohibited vessels from Massachusetts entering port, because that colony did not enforce the acts of trade. They also raised the value of silver money — the Spanish and Mexican coins which were in circulation — from 6*s.* 8*d.* to 6*s.* per ounce, hoping thereby to bring more money into the province. They changed the bounds of towns. They not only ordered the continuance of taxes, but also that constables should forbear collecting town or parish rates until those of the province were paid. Many orders relating to minor affairs, though within the customary sphere of executive action, were issued.[3] William Vaughan and other citizens, for various acts of opposition or resistance to the measures of the government, were imprisoned and

[1] Provincial Papers, I. 475, 476, 574; Colonial Papers, 1685–1688, 298, 300.

[2] Colonial Papers, 1681–1685, 741; *ibid.* 1685–1688, 298, 301; Provincial Papers, I. 474, 502, 531; Belknap, I. 200.

[3] Provincial Papers, I. 480, 488; Belknap, I. 201.

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detained there for indefinite periods, as a convenient method by which to relieve the governor of their interference.

But the most remarkable feature of Cranfield's policy was his attack on the clergy of the province in the person of Rev. Joshua Moody. As time passed Cranfield seems to have become thoroughly convinced that the clergy and Congregationalism in general were chiefly responsible for the tendencies toward independence which he saw in New England. Visits which he made to Massachusetts helped to confirm his opinion. He became especially bitter against Harvard College, believing it to be a seminary of sedition and that it ought to be suppressed. To this subject he repeatedly returns in his letters and dwells on it at length.[1] The ministers, wrote he, disapprove of the oaths of allegiance and supremacy as unlawful, and publish this view as a part of their doctrine. It speaks well for Cranfield's intelligence that he saw so clearly the source of the special trend in New England politics. But he had nothing to offer as a remedy, except the silencing of the ministers and a thoroughgoing sacramental test for all office holders. For the purpose of enforcing religious uniformity in New England, he would revive the acts of Elizabeth which, though they mentioned the dominions, had never been put into force there. He would compel the ministers, though not in orders, to administer the sacrament according to the ritual of the English Church. He would have it administered to himself and others as Anglican communicants. In short, near the close of the seventeenth century and twenty years after the English government had signified its abandonment of all idea of enforcing uniformity in the colonies, Cranfield advocated a revival of the policy which is attributed to Laud. Nothing shows his recklessness, or indicates the lengths to which he was prepared to go, quite so clearly as this.

Moody, the Portsmouth minister, had from the first been outspoken in his opposition to the new autocratic régime. He had already had one or two encounters with Cranfield, and it was known that his advice was sought by leaders of the opposition.[2] The governor began with an effort to secure

[1] Colonial Papers, 1681–1685, 576 *et seq.*

[2] Belknap, I. 204; Provincial Papers, I. 482–487, 520.

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an observance of Christmas and of the 30th of January. Then he issued an order that the ministers should admit to the Lord's Supper all persons who were of suitable years and not vicious, and their children to baptism; to all who desired to receive the sacrament according to the English form it should be administered, and any clergyman who refused so to do should suffer the penalty specified in the act of uniformity. Cranfield then, on behalf of himself, Mason, and Hinckes, required Moody to administer the sacrament to them. The clergyman, as was expected, refused. An information, based on the statutes of Elizabeth, was then drawn against him by the attorney general, and he was arrested and brought to trial in the quarter sessions. Moody plead that he was not in orders; that he did not receive his maintenance according to the statutes; that the alleged statutes were not intended for the plantations, liberty of conscience being enjoyed there and confirmed by the governor's commission. But after the exertion of some pressure a majority of the justices were brought to condemn him, and he was sentenced to six months' imprisonment without bail. He was confined for thirteen weeks in the house of Captain Stileman, where he soon had Major Vaughan as a fellow prisoner. After his release Moody was not permitted to preach in New Hampshire, and soon removed to Boston, where he remained until 1692. No single event of Cranfield's administration aroused such deep and widespread feeling of opposition as did this.

But in point of time the last offence which Cranfield committed against what all the colonists considered to be their inherited rights was an attempt to collect taxes which had not been voted by a representative assembly. The effort was made in the spring of 1684, after the prospect of obtaining a revenue through appropriation had vanished, and when it had become evident that little more could be expected as the result of judicial pressure.[1] Collection was first ordered through the constables, but they were able to procure nothing. Then Thomas Thurton, the provost marshal

[1] Provincial Papers, I. 490, 543; Belknap, I. 214.

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and one of the most unscrupulous and offensive agents of the governor, was ordered to do it with the assistance of his deputies and the constables. As the people still refused to pay, Thurton began to levy by distraint. In some cases cattle and goods were seized and sold at auction, and parties are said to have been imprisoned. At Exeter Thurton was resisted, and even some women threatened him with hot spits and scalding water. At Hampton he was beaten, his sword was taken away, and he was tied to a horse and, with a rope around his neck, was conveyed out of the province to Salisbury, in Massachusetts.[1] The local justice found it impossible to procure the arrest and commitment of the rioters. A cavalry troop was ordered out, but not a man responded. The patience of the four New Hampshire towns had now reached its limit, and Cranfield, with his gang of plunderers, found himself powerless. By the natural course of events within the province itself his reckless career had come to an end. He was already writing home that the winters were too cold for him, and that he desired to be transferred to a warmer clime.

But steps had long since been taken which were to insure action on the part of the home government. About the close of 1683 money had been raised by subscription in the four towns to defray the expenses of an agent to England. Petitions had been drawn and signed. Nathaniel Weare of Hampton was selected as the agent, and he quietly left the province for Boston, whence he sailed for Europe. Major Vaughan was appointed to procure depositions of later acts of misgovernment and send them to Weare. It was because of Vaughan's connection with this, and his refusal to give security for his good behavior, that he was arrested and kept in prison for nine months. Some depositions, however, were procured, though witnesses had to be taken out of the province to be sworn. Weare, with such information as he had, presented his complaint, and in July, 1684, it was referred to the lords of trade.[2] It charged Cranfield with illegally erecting courts and establishing fees exclusive of the assembly;

[1] Provincial Papers, I. 549–554; Belknap, I. 215.

[2] Provincial Papers, I. 516; Belknap, I. 217. From Weare's manuscripts.

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with violating the provisions of his commission relating to the Mason controversy by insisting that the claims should be decided on the spot and by interested jurors; that excessive fees and costs had been levied, and some who had been unable to pay them had been imprisoned; that others, for lack of money to carry on their suits, had been forced to submit; that the value of money had been altered; that several persons had been imprisoned without just cause; that the governor and council had assumed legislative power; that the governor had done his utmost to prevent the people from laying their complaints before the king and procuring the necessary evidence.

The lords of trade, after they had received the complaint,[1] sent copies of it and of the proofs which accompanied it to Cranfield. They directed him to let all persons have free access to the records and give them all needful assistance in collecting evidence against him. The order was obeyed, though complaint was made by Mason that town books were concealed from him, the clerks taking oath that they knew not where they were. Mason's suits were also suspended. After the collection of evidence had been completed, a revised indictment was sent to England and a hearing of the case was held before the lords of trade in March, 1685.[2]

In April an order in council was issued which contained the final decision. It was that Cranfield had not pursued his instructions in reference to Mason's claims, but instead had caused courts to be held and titles to be decided in the province, and that with exorbitant costs. He had also exceeded his power in regulating the value of coin. As Cranfield had already requested leave of absence and it had been granted, no further action was taken. He returned to England by the way of Jamaica, and was subsequently appointed to the collectorship of Barbadoes. Walter Barefoote, who was the deputy, became acting governor, and held the place until Dudley's commission as president of New England arrived.

[1] Provincial Papers, I. 562.

[2] Colonial Papers, 1685–1688, 28; Belknap, I. 220.

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CHAPTER XII

NEW YORK AS A ROYAL PROVINCE. THE ADMINISTRATION OF GOVERNOR DONGAN

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WHEN, as the result of the accession of James, Duke of York, to the throne, New York became a royal province, a new commission, with accompanying instructions, was issued to Governor Dongan.[1] They bore dates in May and June, 1686. In general character they were the same as those which had recently been issued to the governors of Virginia and New Hampshire, except that no provision was made for an assembly. As we shall see, they were exactly reproduced in the commissions and instructions which were issued to Andros in 1686 and 1688 as governor general of the dominion of New England. This extension of this type of commission and instructions fully confirmed and established it as the one which was to be followed in the royal provinces throughout the eighteenth century. In these documents reasonably uniform principles of government were laid down and such as were in harmony with English sovereignty and law. A uniform administrative system in harmony with them was what the British officials sought to substitute for the variety and crudities which were so conspicuous among the chartered colonies. It is a suggestive fact that the royal system agreed better with conditions which existed in New York than with those of any other colony. Having regard both to the commission and the instructions, the following were the principles which they set forth — and with modifications to fit local and temporary differences the description will apply to all the provinces which passed under royal control.

In all possible ways the authority of the king was to be recognized; officials, from the governor down, held directly or indirectly by his appointment; if the governor suspended a councillor he should at once notify the king of the reasons;

[1] N. Y. Col. Docs. III. 369, 377, 382.

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the oath of allegiance and appropriate official oaths were to be administered to all office holders; periodical reports were to be made by the governor to the lords of trade concerning all affairs of government, and minutes of the proceedings of the council were required to be sent to England; reports concerning matters of finance were to go with vouchers to the officers of the royal treasury; appropriations of revenue were always to be made to the king and all writs should run in his name; no fines or forfeitures amounting to more than £10, and no escheats, should be remitted till the lord high treasurer was notified and directions about the matter were given; no grant should be made or act done whereby the revenue was lessened without special permission; money should be paid out of the treasury only under the warrant of the governor; no new court or judicial office should be established without the king's special order; alterations in the value of the coin were placed under the same restriction. These are typical of requirements which meet one at every step, and they were all intended as guaranties of English sovereignty.

Conformity with the law of England, so far as local conditions would permit, was equally prominent and was the chief kindred object that was sought. In a way this purpose was facilitated by concentrating authority in the hands of the executive and excluding an assembly from the system. The governor and council, however, were given the power to legislate, as well as to issue ordinances. The prior legislation of the colonies where royal government was established was considered as still in force, though it was subject to modification or repeal in parts by acts of the governor and council. In like manner existing revenue should be continued until new taxes were levied. The membership of the councils was often twelve, though it was considerably larger in the case of New England. They were selected from among the freeholders, thrifty men and well affected to the government. The quorum was usually five or seven. The possible number by whom the most important business was done was therefore small and necessarily subject to great influence by the governor. And yet the members were promised freedom of speaking and voting. The form

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of enactment was "by the governor and council." In order to insure agreement with the laws of England, all acts, within three months after their passage, must be sent to England for approval or disallowance. In the instructions it was declared that no man's life, freehold, or goods should be taken except according to law, but this was far from being an effective protection. The maintenance of the supremacy of English law was also sought through the system of appeals in civil suits, first to the governor and council, and finally, in cases involving more than £300, to the king in council in England. Security must be given to meet all charges which might accrue. The power of reprieve and pardon in criminal cases, subject when necessary to review by the home government, was reserved to the governor.

Military authority was bestowed on the governor, without express mention of the council. It included the power to levy, arm, muster, and command the entire militia of the province and all its force by sea and land. A system of training was to be maintained, and an inventory of arms and stores should annually be sent to England. The militia was to be used not simply within the province, but might also be sent to other colonies for their protection. By this provision, repeated as it was in later instructions, an important step was taken to overcome the particularism which appears in the laws of some of the chartered colonies and in the practice of nearly all of them. Authority was given to the governor to build and demolish forts, to furnish them with ordnance, and to execute martial law within the province. Vice admiralty powers were bestowed on the governor in great fulness, but they were not to extend to offences committed on the high seas or by persons serving on royal ships of war.

The governor was required to promote trade, including that with the Indians; to check monopoly, but at the same time to enforce all the provisions of the acts of trade and prevent traffic with the territories of the Royal African company. Land in moderate quantities should be bought from the Indians. Treaties should be observed and special means taken to suppress pirates. The governor was also

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empowered to grant land at a moderate quit rent, to establish markets, fairs, and ports, and to cause the erection of custom houses and storehouses.

In provinces where, as in Virginia or New York, the Church of England was favored or established, the governor was commanded to foster its worship, cause parishes to be formed, uphold the jurisdiction which was becoming fixed in the hands of the bishop of London, collate to benefices, grant licenses for marriage and probate of wills, have a care for the orthodoxy of schoolmasters, uphold good morals and punish their opposite. In New York and New England the press, if there was one, was placed under a strict censorship. Intelligent conformity in all these details was sought, though by no means always attained, through regular correspondence with the officers in London.

Among the first matters of business which came before Dongan as royal governor was the duty of replying to the queries sent by the home government concerning the condition of the province.[1] His replies on many points were very detailed. He outlined the judicial system as regulated by the acts of assembly. The bills which had been passed during the last session he sent to England with his report on the state of the province. The defences of the province are described. But upon the revenues and expenditures the governor went into the greatest detail. In connection with this subject he urged the annexation of Connecticut and the Jerseys to New York, a subject to which he recurred in nearly every letter which he sent to England.

New York in the seventeenth and early eighteenth centuries ranked among the smaller colonies. It comprised, in addition to the three islands and the Westchester region in its southern part, only a narrow strip of settled country on either bank of the Hudson. Its form was unfortunate, while at the same time its central location made it a favorite object of attack both from the north and the south. Dongan never ceased to argue that the resources of New York as it was, with its sparse population, its limited area, its rocky soil

[1] N. Y. Col. Docs. III. 389.

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and mountainous character, were inadequate to sustain the burdens which rested upon it. He perceived that it occupied the central position in the chain of English colonies which now extended along the coast. Upon it rested chiefly the task of maintaining Indian alliances and of regulating dealings with the French. Should war with Canada ever occur, New York would surely be a chief object of attack. Dongan was already seeking to establish trade relations with the Indians beyond Niagara, and thus to break up the monopoly of the French and thwart their plans of territorial expansion. To him the rivalry of the French and English for the possession of North America was a present fact. He thought and acted continentally. The possibility of a conflict he clearly perceived. To his mind New York seemed to be the pivot on which hung the fortunes of the English cause. He therefore deplored the fact that the ancient bounds of New Netherland had not been retained as the limits of New York. Dongan insisted upon the advantages of uniting Connecticut with New York, instead of with New England, as the changes which were in progress seemed almost to have assured. He dwelt upon the loss to the revenue of New York and its Indian trade which was caused by the independence of the Jerseys. Smuggling was facilitated, traders were attracted to the ports of the Jerseys, because there no customs duties were levied. He was not in favor of making Perth Amboy a port and stationing a customs officer there, for all the business, he thought, could better be done at New York.

Dongan deplored the establishment of Pennsylvania as a distinct province. He feared its influence on the peltry trade of New York. He could not believe that it ever could have been the king's intention to grant away so much territory which had been a part of New Netherland. He desired that a strip of land between the Delaware and Susquehanna rivers, about twenty-five miles broad, might be taken from Pennsylvania and given to New York. In that region he also asked permission to erect two forts which he apparently considered almost as necessary to the preservation of the interest of New York in the fur trade as would be a fort at

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Niagara. He also suggested the importance of restoring the Delaware Lower Counties to New York, so that their tobacco might be brought to Manhattan without duty and thence shipped to Europe. Even after these territories had been separated from his province, Penn, it was conjectured, would have a larger area than all England. These arguments were quite in harmony with the plans which were already about matured in England to unite the northern colonies into a great dominion of which New York must necessarily become the centre. Andros, during his administration, had cherished and expressed the same ideas, though perhaps in less detailed form.[1]

In his discussion of the revenue, Dongan began with an account of the customs and excise. Coming to the quit rents, after stating that in most of the patents which were granted by his predecessors either no quit rent or a very inconsiderable one had been reserved, he stated that he had secured the renewal of many grants with increased rent. "The methods that I took for the obliging them to this was finding several Tracts of Land in their Townshipps not purchased of the Indians and soe at his Majesty's disposal. They were willing rather to submit to a greater Quit-Rent, than have that unpurchased land disposed of to others than themselves."[2] "It is likewise true," he again wrote, "that I have called in former Patents and still continue to doe soe, that I might see by what Tenure they hold their lands, which I find generally to bee by none, they paying no acknowledgment to the King. Whereupon being convinced of that defect by the resolution of ye Judges the people for their own ease and quiet and that of their Posterity which otherwise might have fallen under the lash of succeeding Governors, without the least murmuring have renewed their Patents, with a reservation of a certain Quit-Rent to the King to the noe small advancement of his Revenue, and this done with general satisfaction and of which none will in the least complain but on the contrary express themselves thankful for it."[3]

[1] N. Y. Col. Docs. III. 415. [2] *Ibid.* 401. [3] *Ibid.* 412.

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The receiver and collector during more than three years before the time when Dongan made his report, was Lucas Santen. He held office under a patent first from the duke and later from the king. He appears to have been an extremely inefficient officer, and Dongan was compelled to assume to an extent the direct management of the finances, in order to save them from the direst confusion. He tried to treat Santen kindly, but found him totally unfit for business and as dependent as a child upon the direction of others. The interference of the governor, however, deeply offended the collector, provoked him to outbursts of passion, and finally led him to submit a long series of charges against Dongan to the authorities in England. Dongan found no difficulty in answering the complaints, and in doing so he threw some light on certain phases of colonial administration.

Dongan found that collectors and receivers were appointed for Albany,[1] Esopus, Long Island, and the counties of Richmond, Westchester, Dukes, and Cornwall. These were appointed, in part at least, by the collector, but owing to Santen's inefficiency the tendency was for the governor to assume the appointment of them all. Robert Livingston owed his appointment at Albany at this time to the governor. For three years the collector at Esopus had not accounted, and when he was forced to appear before the council, plead that his papers, together with much of the corn and peltry which he had received for the excise, customs, and quit rents, had been burned with his house. All that could be obtained from him was a bond for the payment of £200. From Richmond no account had been submitted. Santen had obtained two bonds from the collector of Westchester payable in March, 1687; but as the collector was so poor as to have "hardly bread to put into his mouth," Dongan considered his bonds worthless and that the revenue from Westchester was a total loss. During the first year of his administration only £52 was reported as the yield of the excise on Long Island. As this was the most populous section of the province, where

[1] N. Y. Col. Docs. III. 401 *et seq.*

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much rum was consumed, Dongan considered this sum to be absurdly small. He therefore appointed Nicolls and Vaughan collectors of this tax on Long Island, with the agreement that they should receive £40 and account for the remainder with Santen. Apparently this worked well as a temporary expedient, but for the next two years a collector was appointed on a salary. His accounts were submitted and duly audited. So were those from Dukes county and Cornwall.

The people at the east end of Long Island the governor found engaged in active trade with New England and unwilling to enter and clear at New York. The oil which they procured from the whale industry was sent to New England ports and exchanged for European goods. To check this evil Dongan caused the passage of an act imposing a duty of two per cent. on goods which were imported from any colony where they were not produced. Of the effect of this curious application of one of the principles embodied in the English navigation act we are not informed. But in pursuance of a concession to the towns, a port was established at the east end of the island and an officer was appointed to enter and clear vessels and collect duties.

"The first year,"[1] wrote Dongan, "I left everything to the care of Mr. Santen and what officers hee thought fit to put in, but afterwards, finding things ill managed, I spoke to Mr. Santen several times, advising him as a friend to look better to the trust reposed in him. . . . After the expiration of the year I desired him to bring in his accounts that they might be audited, which hee promised me from time to time but in such manner as was not fit for him, for always when I spoke to him of monys and accompts, hee flew into a passion. Upon which I ordered him that since hee had no better Government of himself hee should refrain coming into my company. And after I frequently sent to him by the Secretary for his accts, who likewise met with the like dilatory answers. Upon which I had him brought before the Council 3 or 4 times, where he was often ordered to bring in his acct[s] but

[1] N. Y. Col. Docs. III. 402.

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all to noe purpose, for upwards of a year together, as your Lordships may see by the time of the Audit and by the several Orders of Council herewith sent.

"At last when his acct[s] came I shewed them to the Council who were mightily surprised that for eighteen months & upwards the Revenue should amount but to 3000 and odd pounds. Upon which I had them audited and thereby it was found that a great many frauds had been done to the king as your Lordships may see by the said Audit & the charge brought in and proved ag[st] Mr. Santen."

"After the Audit of his first accompts," continues Dongan, "his others were demanded, and with the same deficiency as the former, obtained, as your Lordships may perceive by the said Minutes of Councils particularly the order of payment every Saturday, which was occasioned thus. The Council considering how dilatory Mr. Santen was & with what difficulty he would be brought to account, being satisfied that Mr. Santen was then behind hand in his payments and that in process of time he might bee yet more, so for the preventing of further imbezlement of his Majesty's Revenue, they ordered him that every Saturday hee should accompt with & pay into mee what hee had received the proceeding week, which was a method taken in the time of Sir Edmund Andros with Captain Dyer the then collector on the like occasion, tho' this had not the like effect through Mr. Santen's disobedience, for as hee did with all other orders, hee did with this, hee took noe notice of it."

The council also on other occasions repeatedly ordered Santen to have his accounts ready to send over audited to England by Mr. Spragg. But though Spragg delayed sailing for two months, Santen refused to submit his accounts to Dongan for audit, insisting that he had been instructed by the lord treasurer that it was not necessary, but that it would be sufficient if he left a duplicate of the accounts with the governor. The council, however, fell back on earlier instructions, which were to the contrary effect. But it was to no purpose; Santen would not obey their commands or correct the irregularities of his administration. With such audit as could be got it was found that he was more

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than £1700 behind. The poor man was subject to "hypocondriack fitts" and was "wholy unfit for business," and had it not been for Dongan's constant watchfulness, the revenue would have suffered much more than it did. But, as Santen was an appointee of the treasury, Dongan could not remove or apparently even suspend him. Therefore he turns to the king in despair, defending himself against Santen's charges and insisting on the latter's total incapacity. In 1687 Santen was removed and Matthew Plowman was appointed as his successor.

About the time when Dongan became a royal governor, the Marquis de Denonville was appointed governor of Canada. He was a man of large experience, especially in military affairs, alert, systematic, and enthusiastic in the service of the king. He was sent over to repair the damage which had come to French interests through the weakness and mismanagement of De la Barre. He was told in his instructions[1] that the pride of the Iroquois must be humbled, and that the Illinois and other allies of the French must receive support. He was informed that the governor of New York had undertaken to assist the Iroquois and to extend British dominion up to the banks of the Saint Lawrence and over the entire country of the Five Nations. At the same time M. Barillon, the French minister at the English court, was ordered by the king to complain that Governor Dongan was aiding the Iroquois, though they were subjects of France and their lands were a part of its territory. He was to demand that precise orders be sent requiring Dongan to confine himself within the limits of his government and to pursue a different line of conduct toward Denonville from that which he had followed toward his predecessor. By this act, as well as the attitude of Louis XIV and his ministers during his entire reign, Denonville felt assured of the support of his government if he pursued an aggressive policy. But, owing to the dissensions in England and the consequent dependence of James II on the French alliance, Dongan could not be sure of the support of his king.

[1] N. Y. Col. Docs. IX. 271.

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The governor of New York, however, did not permit himself to be deterred by uncertainty concerning the attitude of his government from clearly asserting the claims of the English on the north and northwest. In doing this he assumed the lead among his own people. His claims and plans as yet interested but very few among them. The other colonies stood wholly aloof, and probably only the few officials who had occasion to attend Indian conferences at Albany were at all aware of the interests for which Dongan was striving. Consciousness upon these points was developed and extended only after a long conflict over the questions which Dongan first propounded. He claimed the entire Iroquois country as within the sphere of influence of the English. In consequence of that claim he considered invasions of that country by the French for the purpose of punishing the Iroquois as unwarranted and a menace to English interests. Of the presence of Jesuit missionaries among the Indians he was intensely suspicious, for he knew them to be most effective political emissaries as well, forerunners of French influence and rule. He desired that among the Iroquois their place might be taken by English missionaries. He longed to see an English commercial and military outpost established at Niagara. He was already sending English and Dutch traders to the Ottawas and other tribes of the Northwest for the purpose of diverting their trade from the French. He insisted that the Five Nations should bring their quarrels with the French to Albany for settlement. Through the English as their overlords disputes with all parties should as far as possible be adjusted.

That Denonville was keenly alive both to the realities and the possibilities of the Anglo-Indian alliance, is shown by his letters to the French ministers. In October, 1686, he wrote to Seignelay[1] that he was certain Dongan had called together the Iroquois at Fort Orange for the purpose of inciting them against the French. Arms and ammunition were being presented to them for use against the French. Efforts were being made to draw the Praying Indians of Montreal away

[1] N. Y. Col. Docs. IX. 296, 297.

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from their allies. "Colonel Dongan's letters," continues the French governor, "will notify you sufficiently of his pretensions, which extend no less than from the lakes, inclusive, to the South Sea. Missilimackinac is theirs. They have taken its latitude; they have been to trade there with our Ottawas and Huron Indians, who received them cordially on account of the bargains they gave, by selling their merchandise for beaver which they purchased at a much higher rate than we. Unfortunately we had but very few Frenchmen at Missilimackinac at that time. M. de la Durantaye, on arriving there, wanted to pursue the English to pillage them. The Hurons were hastening to escort them after having expressed a great many impertinences against us. Sieur de la Durantaye did not overtake the Indians who met the English on their way to join and escort them through Lakes Erie and Ontario, until they should be beyond all danger of an attack from us. Thus you easily perceive, My Lord, that the English and the Senecas understand each other wonderfully well and are perfectly agreed."

Similar claims were in every instance urged by the French. They claimed the Mohawk valley as their territory, and vast stretches of country beyond it as well. They cited, in support of the claim, dealings of their missionaries and traders and officials with the Iroquois since the time of Champlain,[1] including a series of treaties with them. La Salle had temporarily established a post at Niagara. The Iroquois had been required to treat only at Montreal or Quebec. Invasions subsequent to these events of the country south of Lake Ontario did not violate, they said, the rights of any foreign power. In dealings with the western Indians the French had anticipated the English by sixty years. "In respect to the pretensions which you say you bore to the lands of this country," wrote Denonville, "certainly you are not well informed of all the acts of occupancy which have been performed in the name of the King my Master, and of the establishments of long standing which we have on the land and on the lakes."[2] No overlapping of claims could be

[1] N. Y. Col. Docs. IX. 379.

[2] *Ibid.* III. 459.

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more complete than this, and no officials were ever more conscious of the fact and more determined, though both of the Catholic faith, to defend their pretensions by any means short of war. Both, of course, repeatedly declared that the final decision rested with their masters in Europe.

As the Senecas were rapidly destroying the Illinois, were disturbing the peace of other western tribes, and were trying to win them away from the French alliance, Denonville was determined from the first to make war upon them. They should be severely punished. Thus French influence, which had suffered greatly from De la Barre's failure, would be strengthened throughout the region of the Great Lakes, and the way would be opened for the reëstablishment of the post at Niagara. But Denonville was aware that Dongan was supplying the Iroquois with all the arms and ammunition they wanted, and charged him with directly inciting them to attack the French. This, however, the English governor stoutly and repeatedly denied. Still, to counteract the intrigues of the English, Father Lamberville and other priests were employed to distribute presents among the Iroquois and the western tribes.

Denonville found Canada in an almost defenceless condition. He saw that forts and blockhouses must be built. But he feared to build them, lest he should bring down the Iroquois upon him before he was in a condition to fight. In his perplexity he appealed to the French government for troops. "The principal affair at present," he wrote to Seignelay, "is the security of this Colony, which is in evident danger of perishing if the Iroquois be let alone, and also if we make war and have not a decided advantage over them; and however decided our advantage may be, the people, separated as they are, will always be in danger. Yet, my Lord, if you aid us with troops, war will be the least inconvenience; for if we wage it not, I do not believe the next year will pass away without the whole trade being absolutely lost; our friendly Indians revolting against us and placing themselves at the mercy of the Iroquois, more powerful, perhaps better armed than any of them. The whole of the Hurons are awaiting only for the

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moment to do so. Had I not by Father de Lamberville's care fortunately avoided war from the very beginning of this year, not a single canoe would have come down from the forests without being taken and plundered in the River of the Ottawas. We should have lost a great number of good men."[1]

Denonville received no assistance from home, but nevertheless continued preparations for war, opening meantime a correspondence with Dongan. This began with the customary civilities, Dongan writing in French, and referring briefly to his experience with De la Barre. Denonville replied, excusing De la Barre because he had to deal with the Senecas, a "people who have neither religion, nor honor, nor subordination." They had falsified their pledges by the many acts of violence which they had committed against the Ottawas. Still, in spite of their evil conduct, the French king desired to win them over to Christianity, and therefore had sent missionaries among them to preach the gospel. He then adroitly urged upon Dongan the idea that they should unite in supporting the work of the Jesuits among the Iroquois. "Shall we, Sir, be so unfortunate as to refuse them our Master's protection to sustain them and to contribute a little on our part to win poor souls to Jesus Christ, by aiding them to overcome the enemy of God who rules them? No, Sir, it is impossible for you but to groan when you perceive that so far from assisting those Apostles of the Gospel, we wage war against them, if we allow their enemies to obstruct their converting these poor people to the Faith."[2]

But this appeal met with no response from Dongan except polite phrases. Catholic though he was, it was as far as possible from his intention to give the work of the Jesuits among the Iroquois any support. His attention was directed to the collection of military stores by the French at Cataraqui, and to the rumors that they intended to build a fort at Niagara. Reports of this had been brought to him by a French *coureur de bois*, who had deserted to Albany. "I know," Dongan wrote, "you are a man of judgment, and that you

[1] N. Y. Col. Docs. IX. 298, 301. [2] *Ibid.* III. 456.

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will not attack the King of England's subjects." He also felt assured that Denonville, "for a little peltry," would not raise a disturbance among the Indians in that part of the world, who were dependent upon the two crowns. He professed that he was laboring to prevent the Five Nations going beyond the Great Lakes and attacking the French traders or their Indians. Everything could be settled by amicable correspondence, and by reference to the authorities at home. "If there be anything wrong, I doe assure you it shall not be my fault, tho we have suffered much, and doe dayly by your people's trading within the King of England's territoryes."

Denonville denied, though not in precise terms, that he intended to build a fort at Niagara. He advised Dongan, if they were to live on good terms, not to protect deserters or believe the reports which they circulated. To this Dongan replied, "The strictest care should be taken concerning runaways from you, and those who are here, if you please to send for them, shall be all conveyed to you."[1]

But no steps were taken to send the deserters back to Canada, while reports continued to be circulated that Dongan was urging the Iroquois to attack the French. This drew from Denonville a sharp letter of protest.[2] "You were so good, Sir," he wrote, "as to tell me that you will give up all the deserters who, to escape the chastisement of their knavery, have fled to you; yet, Sir, you cannot but know those who are there. But as they are all for the most part bankrupts and thieves, I hope that they will finally give you cause to repent having afforded them shelter, and that your merchants who employ them will be punished for having confided in rogues who will not be more faithful to them than they have been to our people." "You proposed, Sir," he continued, "to submit everything to the decision of our masters, nevertheless your emissary to the Onnontagues [Onondagas] told all the Nations, in your name, to pillage and make war on us. It is a thing so notorious that it cannot be doubted, and will be affirmed in the presence of your emissary. Whether it was done by your order or

[1] N. Y. Col. Docs. III. 456–460. [2] *Ibid.* 461.

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through the influence of your merchants at Orange, it has been said and done, and you are not a stranger to the enterprise of your merchants against Michilimaquina Michilimackinac."[1] He then denounced Dongan for furnishing the savages with liquor, which converted them into "demons and their cabins into counterparts of hell."

In Dongan's reply[2] he denied all the charges, and in regard to the liquor asserted that "our Rum doth as little hurt as your Brandy and in the opinion of Christians is much more wholesome." But at the same time he was striving as hard as ever to checkmate the French. In 1685 Johannes Rooseboom of Albany had been sent at the head of a body of armed traders in eleven canoes to carry English goods to the upper lakes. The enterprise was successful and they were urged by the Indians to come every year. Denonville sent an officer to Detroit to stop them, but they returned in safety. But in June, 1686, Denonville sent an order to Du Lhut, who was at Michilimackinac, to occupy Detroit with fifty *coureurs de bois*. This was obeyed, and a stockade was built on the western side of the strait, near the outlet of Lake Huron. Thus Dongan's plans respecting that strategic point were defeated.

In the autumn of 1686 Rooseboom was sent out again,[3] this time with twenty or more canoes. He was instructed to winter among the Senecas. Major Patrick McGregory was then commissioned to leave Albany in the spring with a body of armed men. McGregory, it was arranged, should meet Rooseboom in the Senecas' country, and the combined parties, accompanied by a number of Iroquois Indians, should visit the country of the Ottawas. Though they were ordered to return to Albany without disturbing the French, the evident purpose of the expedition was to establish permanent trade relations and alliances with tribes of the Northwest.

When news of this move reached him, Denonville wrote[4] to Seignelay that he had a mind "to go straight to Albany, storm their fort and burn everything." "The English stir

[1] N. Y. Col. Docs. IX. 308.

[2] *Ibid.* III. 462.

[3] Brodhead, History of New York, II. 429, 443; N. Y. Col. Docs. III. 476; IX. 306, 318.

[4] Parkman, Frontenac, 129.

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up the Iroquois against us, and send parties to Michilimackinac to rob us of our trade. It would be better to declare war against them than to perish by their intrigues." His protests to Dongan only drew from him the reply,[1] "Bee assured, Sir, that I have not solicited nor bribed the Indians to arme and make warr against you. . . . I have forbidden their joining (if they should bee entreated) with any others against you; neither have I ever allowed any plunder. I have only permitted several of Albany to trade amongst the remotest Indians with strict orders not to meddle with any of your people; and I hope they will finde the same civillity from you. It being so fàr from pillaging that I believe it is as lawfull for the English as French nations to trade there, we being nearer by many leagues than you are." He wished to be furnished with the authority for the statement that he had ordered the Indians to plunder and fight the French. His disclaimer in the case was doubtless true, as was his profession that he did not understand the references to an English expedition to Michilimackinac. As to the deserters, Dongan knew not who they were, but, "Rascalls and Bankrouts" as they were said to be, upon a requisition from Canada he would be glad to send them home.

With the summer of 1687 this fruitless correspondence was interrupted by the expedition of Denonville, with a large force of French and Indians, into the country of the Senecas. The Indians retired before him, and all that he directly accomplished against them was the destruction of their harvest and some of their villages. Indirectly, however, the expedition had some important results. While the French were busy at Michilimackinac gathering their western allies for the war, the traders and Indians under Rooseboom approached. They were at once surrounded by a large body of French and Indians and forced to surrender. Their goods were seized and given to the Indians. Later, McGregory with his party, who had separated from Rooseboom, were captured between Detroit[2] and Niagara. All were taken to lower Canada as prisoners, while their cap-

[1] N. Y. Col. Docs. III. 462. [2] *Ibid.* III. 436.

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ture caused a revulsion of feeling among the Indians in favor of the French. The western Indians now flocked to the standard of Denonville, and were present in large numbers with his expedition.

The apparent triumph of the French over the Senecas was also utilized for the purpose of establishing the claim of conquest over that country.[1] Proclamation of this was made by Denonville in the presence of his forces, and the arms of the king of France were ordered to be set up throughout the country. Permanent possession was also taken of Niagara, buildings were erected by the French near the mouth of the river and a small body of men was posted there. Thus the plans of Dongan were thwarted both at Detroit and Niagara.

Before the French governor set out upon his expedition into the Seneca country news had arrived of the conclusion at Whitehall of the treaty of neutrality of November, 1686,[2] between England and France. This was intended to secure peace between the subjects of both kings in America; even though war should break out between the two nations in Europe. It provided that neither party should assist the Indians with whom the other might be at war, that they should not fish or trade in each other's territories, and that unlicensed privateers should be punished as pirates. Inasmuch as in the treaty no acknowledgment was obtained from France that the Iroquois were English subjects, the French must be considered to have secured the greatest advantages. But Dongan showed no immediate disposition to heed its requirements, for when the Senecas appealed to the authorities at Albany for aid, abundance of arms and ammunition were furnished them. These they used in their effort to withstand the French a few weeks later. Of this fact Denonville took due notice in his letters home.[3]

In August following the expedition of Denonville into the Seneca country, Dongan sent Captain John Palmer to England with despatches.[4] In these he informed the gov-

[1] N. Y. Col. Docs. IX. 334, 335.

[2] Dumont, Corps Diplomatique, VII.[2] 141; Brodhead, II. 475.

[3] N. Y. Col. Docs. IX. 347.

[4] *Ibid.* III. 428, 475.

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ernment of what had occurred and also that the French were encroaching on the Five Nations as fast as they could. He insisted that forts should be built on Lake Champlain, at Salmon River, at Niagara, and similar posts between Schenectady and Lake Ontario. The northern boundary should be settled. English priests should be sent to live among the Five Nations. Immigrants from Ireland should be sent over to people the disputed country and thus secure it for the English. Various measures of defence were taken at the same time by the governor and council in New York,[1] while Dongan arranged to spend the winter of 1687–1688 in Albany.

When Palmer reached London, negotiations were in progress between French and English commissioners over the execution of the treaty of neutrality and the establishment of the boundaries.[2] The French repeated their complaints against Dongan and their demands that he be ordered to cease disturbing the French. Since Andros, in the spring of 1688, had captured Saint Castin's post at Pentagoet, the request was made that the same command might be sent to him. But Dongan's despatches revealed the danger which threatened English interests and led to a firm reply being made to French claims. The right of England to the Iroquois country was reasserted.

But it soon became evident that Dongan had acted in harmony with the real desires of his government. A warrant[3] from the king was sent to Dongan, authorizing him to continue to protect the Five Nations. He was required to inform the governor of Canada that England owned the Five Nations to be its subjects and had resolved to protect them. In case the people of Canada should continue to annoy these Indians and invade the dominions of England, Dongan was empowered, if need be, to resist such invasion with all the military force of the province, and to pursue them as far as might be necessary. The first suggestion from the English government of its resolve, if it were necessary, to secure the

[1] Mss. Council Minutes. [2] N. Y. Col. Docs. III. 506–510.
[3] *Ibid.* III. 503.

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coöperation of the other colonies in the defence of New York, appears in the authority which was given to Dongan by this document to call on the governors for such aid. He was also empowered to build forts and other defences at all places where they seemed to be necessary.

After the return of the French from their expedition some more sharp but ineffective correspondence passed between Dongan and Denonville; McGregory and his associates were released and sent back to Albany. Two envoys were also sent thither by Denonville to negotiate concerning the questions in dispute. But all this was futile. The interviews merely served to relieve the monotony of Dongan's winter sojourn at Albany. While they were in progress he held a friendly conference with representatives of the Five Nations. He also applied to Maryland for aid, presumably also to the other colonies as far south as Virginia. Dongan states that a force of six hundred men from New England had been promised; but Maryland replied that when she received an order direct from the king, it would be obeyed.[1] Neither party was inclined to recede. Thus affairs stood, so far as relations with Canada were concerned, when New York became a part of the great dominion which James II was forming.

[1] Md. Arch., Proceedings of Council, 1688–1693, 26–29.

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CHAPTER XIII

THE DOMINION OF NEW ENGLAND

PART IV.

In the revocation of the Massachusetts charter and the events which led up to it the forces which determined the course of American colonial history appear in unusually clear relief. On the one side we have a community of religious nonconformists whose natural trend was toward the largest degree of self government which was consistent with any recognition whatever of the supremacy of the mother state. This characteristic was reflected in all their institutions and in almost every phase of their history. On the other side appears an assertion of imperial authority and restraint over the colonies which, though seemingly moderate when first announced in the letters of Charles II, became, under his successor and in a later period of the Restoration, almost unlimited in scope.

This policy, like so much in the ideals of the Stuarts, was as close an imitation of French models as the character of the English permitted; and there were those even among the colonists at the time who recognized it as such. Had these ideals prevailed, the powers of government in the colonies would have been concentrated in their executives acting under strict instructions from England: the boundaries of the colonies, as specified in their charters, would have been disregarded and for governmental purposes they would have been combined into larger and larger unions; the affairs of the frontier, including relations with the Indians and everything which pertained to defence, would have been subjected to regulation, as far as possible from a single centre; everywhere the interests of the state religion would have received the favor of government, though not necessarily to the exclusion of dissent; in commercial and industrial affairs the interests of the empire as a whole and as interpreted from the standpoint of England, would have been the cherished

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object of attention; the sphere and activities of local government within the colonies would have been narrowed; and while the principles of English law which guarantied private rights would have been retained, that law would have been administered uniformly, from above and from relatively a few centres, and those varieties in detail which came from local and individual initiative would have been minimized or would gradually have disappeared. It is not probable that the amount and scope of parliamentary legislation affecting the colonies would have increased, but it would soon have become evident that administratively the colonies were simply an extension of the realm. This was the type of policy whose claims were now asserted as a counterpart to the particularism of New England and of the chartered colonies generally.

But the revocation of the Massachusetts charter was only the first step in the long process by which it was hoped that the established tendencies of frontier life in the colonies, especially those of New England, might be overcome. It was also the least difficult part of the task, for it had been possible to consummate this act in England. It must be followed by the like treatment of many other colonies, by their union, and then by the slow development of royal government within the united whole. For such a task statesmanship of a high order was required. Not simply power, but knowledge, sympathy, and skill must be brought into requisition. The object must be pursued with persistence and with large intelligence. If it were to succeed, the colonists must in some way be brought to believe that their interests were conserved by it and that it was not something merely imposed from without.

In the failure of the Stuart government to command the ability and the patience which were required for the task of autocratic government lay one of the chief elements of strength in the principle for which the colonists were contending. Their methods of government at home, as well as the officials whom they employed, were ill adapted to the spirit and the needs of the English nation. There was much less likelihood that they would attempt to order their

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colonial policy and their appointments in the colonial service with a clear appreciation of the difficulty of the task they were undertaking. Thus far Edward Randolph had been the agent upon whom English officials had chiefly relied for information and whose advice they had followed in action. But Randolph's personal qualities and his career thus far in New England unfitted him for valuable constructive work. He was a partisan of the narrowest mould, a fitting counterpart of such men as Endicott and Danforth among the colonists. He was an impecunious man, dependent for support on the pickings of office. He therefore formed one among the herd of office seekers who were ever looking for employment. By his zeal in office and his activity as a correspondent he sought to entitle himself to promotion. Besides his personal advancement, his one idea was to promote the interests and claims of the crown, almost irrespective of the effect which they might have on the well-being of the colonists or the relation in which it might stand to their predispositions. All his utterances were affected by this bias. His knowledge of law and business was utilized wholly for these ends. Of sympathy with the body of the colonists and their interests scarcely a sign appears in his voluminous correspondence. Randolph's career somewhat deeply influenced American affairs, but it was in an arbitrary and sinister fashion which tended more toward strife than to peaceful and harmonious development.

The danger was that Randolph's spirit and conduct might prove typical in too high a degree of colonial officials as a class. In some of the proprietary provinces such a spirit had at times appeared. Owing to the remoteness of the colonies, to the comparative disregard in which, because of their dependence and weakness, they were held; because also of the autocratic ideas which prevailed in the Stuart court and of the spirit of favoritism and privilege which then controlled appointments to office, — there was great danger lest the colonial officials who received their places directly from the king should be defective in character, inferior in ability, and indifferent to the needs and desires of those whose affairs they were sent to administer. If that

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should prove to be the case, the substitution of royal provinces for chartered colonies would not materially strengthen the bond of union between the colonies and the mother country.

More than a year and a half elapsed — September, 1684, to May, 1686 — between the arrival of intelligence in Massachusetts that the decree against the charter had been issued and the establishment of government directly under the crown. So great had been the change since 1635, both in the spirit of Massachusetts and in that of the English Puritans, that now there was no thought of resistance. During the interval two elections were held and the general court met for several short sessions. Bradstreet was continued in the governorship, and the only change of significance in the board of assistants was the dropping of Dudley from the list of assistants in 1686. Shrimpton, who had been a friend of Randolph, was summoned before the assistants in March, 1686, for declaring in the county court at Boston that there was no governor and company.[1] Much fruitless and irritating discussion followed, which was occasioned by this affair, but it was brought to an end by the establishment of a new government.

In England, among the questions which first arose was that of the extent of the province which should now be organized in New England.[2] Plymouth had no royal charter and it was immediately resolved that that colony should be annexed to Massachusetts. Since Cranfield's commission had been revoked, the same resolution was reached concerning New Hampshire. King's Province would necessarily be included. The attorney general also reported that the Province of Maine, with the proprietorship of all the ungranted land there, devolved on the crown as soon as the corporation of Massachusetts was dissolved. This cleared the way for the continued union of that province with Massachusetts. The lords of trade and plantations also took notice that Rhode Island and Connecticut "are governed at present by Charters granted

[1] Sewall, Diary, I. 128, 135. He refused to acknowledge that this was a fault or to give bond, and was actually imprisoned for a few hours.

[2] Toppan, Randolph, III. 324, 332.

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by His Majesty . . . which are not yet vacated by any Proceedings at Law." Proceedings, as will appear, were duly instituted, and thus by rapid strides the process advanced by which the dream of Sir Ferdinando Gorges was for a brief time to be realized.

The government of Charles II at first determined to appoint Colonel Percy Kirke to the office of governor and at once to complete the organization of Massachusetts as a royal province. Kirke had served in Tangier, and as his conduct a year later in the suppression of Monmouth's rebellion proved, was an officer of the most brutal character. In discussing the commission of Kirke, which it was thought should be modelled after that of Lord Howard, governor of Virginia, the committee of trade decided that judicial proceedings before the Massachusetts courts and marriages which had been celebrated according to the forms observed there, should be treated as valid. Land which should be at the king's disposal and granted out should be subject to a quit rent. The commissioners of customs should prepare special instructions respecting the enforcement of the laws of trade. The governor should select one of the churches of Boston to be used for religious service according to the rites of the Church of England. It was also finally resolved that no reference be made to an assembly, either in the commission or the instructions.

But it is needless to specify further the provisions which the committee of trade planned to introduce into the commission and instructions of Colonel Kirke,[1] for he was not sent to New England. The change of plan was due to the delay consequent on the death of Charles II, to the outbreak of Monmouth's rebellion, and to the influence which in the interval Randolph was able to exert. He had watched with dissatisfaction the bold proceedings of Cranfield in New Hampshire and saw that he was bringing the king's government into contempt.[2] He also saw that, if a governor

[1] Certain other provisions — giving to the governor absolute control over the military and the censorship of the press — were reported by Barillon to Louis XIV as having been suggested. Fox, History of James II, App. Quoted by Palfrey, III. 395.

[2] See Randolph's letter to the bishop of St. Asaph. Toppan, IV. 17.

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were sent to the new province who should tread in Cranfield's steps or do worse things, existing prejudice toward England would be increased. When the "Bloody Assizes" began, Randolph wrote to Robert Southwell that he had never thought Kirke was a fit man for governor and now he saw that he would be a tyrant. As Randolph himself expected to go to New England in the capacity of secretary and register, he felt that he had also a personal interest in the question. He foresaw that the harder Kirke pressed the people, the more difficult would be the task of the secretary; "So that," writes Randolph, "I must expect betwixt governor and people to be ground to powder." "I had rather have £100 a year in New England under a quiet prudent governor than £500 if he [Kirke] were upon the place."[1] As a way of escape from the perils which he saw ahead, he suggested his own appointment as governor of the Bermuda islands.

But the plan of Kirke's appointment was soon dropped, and instead it was resolved[2] that Randolph should go to New England as secretary and register and with a continuance of his authority as an officer of the customs, and that he should carry with him a commission for a temporary government. Months before he had been in correspondence with Joseph Dudley[3] respecting the chances of appointment for the latter and for some of his friends in New England. Apparently before Kirke was thought of for governor Randolph had fixed upon Dudley as the most suitable man for the place. Randolph had urged the appointment of Dudley as receiver general for New England and held other suggestions in reserve for a later opportunity. He recommended that members of the council should be New Englanders, and submitted a long list of names of those whom he considered suitable for appointment. He was also favorable to the continuance of an assembly. In September, 1685, the royal commission[4] for the temporary government of New England

[1] Toppan, IV. 29, 30, 35.

[2] *Ibid.* 40–50.

[3] *Ibid.* III. 310, 317, 335; IV. 13.

[4] *Ibid.* 51; 1 Mass. Hist. Colls. V. 244. The commission is printed in part in R. I. Col. Recs. III. 195, and in full in Laws of New Hampshire, I. 93.

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by a president was issued. As in the case of the provisional government of New Hampshire, the first appointees, with one or two exceptions, were residents of New England. Joseph Dudley was named as president and with him were associated seventeen councillors, Randolph, its secretary, being one. All were selected from Massachusetts except Robert Mason and John Hinckes, who were from New Hampshire, while Francis Champernowne and Edward Tyng were from Maine, and Fitz-John Winthrop from King's Province. Stoughton, Bulkely, Bradstreet, and Pynchon were prominent among the members from Massachusetts. Among the councillors were only two Anglicans, Mason and Randolph.

The president was empowered to select any one of the council to act as deputy. Seven were to constitute a quorum. They were to meet in Boston within twenty days after the arrival of the commission and take the oath of allegiance, and the same oath should be administered to all office holders. A special oath was also to be taken that they would administer justice and faithfully perform their trust. They were not given legislative power, nor power to lay new taxes, but they were authorized to establish courts, act as a court of appeal and highest resort, appoint military officers, and provide for defence. They were also to see that existing taxes were collected, and freedom of conscience was insured, especially for Anglicans. They were, in short, to act as the general administrative body in the province until a permanent government should be established. The old seal of the colony was to be used until further order. They were commanded to send quarterly a full account of their proceedings to England. Appeals to the king should be allowed in cases which involved not less than £300. Dudley was appointed vice admiral, Wharton judge of admiralty, Randolph postmaster, secretary and register, and surveyor of the woods.[1]

Owing to delay caused by storms, Randolph did not arrive in Boston with the commission until May, 1686. He came in the *Rose* frigate. Immediately steps were taken to establish the new government. Two of those who were desig-

[1] Toppan, IV. 50, 58, 67.

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nated as councillors — Bradstreet and Saltonstall — declined to serve. Some of the ministers, among them Increase Mather, labored with Dudley to persuade him not to accept,[1] but without success.

As Randolph was a representative of the class of royal officials of English birth who were coming to have a permanent influence on American affairs, so Joseph Dudley was one among an increasing number of colonists who were ready to strike hands with the agents of the king and share in every respect their obligations and advantages. Outside of New England a career like that of Dudley would not have called for special remark. The middle and southern colonies contained not a few men of his type who, because they were born and reared on the new continent, did not for that reason think themselves excluded from sympathy with the spirit and aims of the ruling classes in England. The activities of these men in trade, in the professions, and in public office, preserved the harmonious coöperation of colonies and fatherland. The extent to which the sympathies of Puritan New England were divorced from the England of the Restoration is indicated by the sharp criticism which Dudley's career called forth from the Mathers at the time, and has elicited from those in later times who have found in the Puritan commonwealth a peculiar object of admiration. That Dudley was ambitious of worldly preferment, that his training as a lawyer and his experience as agent in England developed and strengthened this ambition, is quite clear. His letters, as well as those of Randolph, show that at least as soon as the proceedings in chancery had made the issue of the decree against the charter a certainty, Dudley began to seek employment in the reorganized government. He consciously chose to act as a mediator in an important transition, to order his life with a view to the prospects of the dawning empire. Though a career of this kind lacked the element of heroism which characterized the lives of the first settlers, it was quite as necessary as theirs and in its way as useful. The critic who would order his

[1] Sewall, Diary, I. 139; Hutchinson, ed. of 1795, I. 315.

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judgments with a view to the issues of our colonial development as a whole will not characterize Joseph Dudley as a traitor, but consider it on the whole fortunate that so able a New Englander as he was available for service at this crisis.

On May 17, at a session of the general court, the establishment of the new government was proclaimed. Sewall, who describes the scene,[1] says that the "old government" drew to the north side of the room in the town house where the court sat, while Dudley and a number of those who were to be his councillors came in on the left. Captain George of the king's frigate, Governor Hinckley of Plymouth, and Governor West of South Carolina — then visiting in Boston — were also present. "The Room pretty well filled with Spectators in an instant." After the assembly had gathered, Dudley addressed them at some length. He said that he could not meet them as governor and company, but only as an assembly of "considerable gentlemen of this place and inhabitants of all parts of the country." Neither could he capitulate with them respecting the king's commands. He denied[2] the truth of charges which had evidently been made that he had put himself forward as a candidate for office under the new régime, that he might thereby pay off old grudges. He pledged himself instead to forget, as far as was possible, all injuries and prejudices, and to serve the colony both at home and in England to the best of his power. After the close of his speech, the commissions of government and of admiralty were shown, as was the letter of transmission from the council. Danforth, the deputy governor, then said, "I suppose you expect no reply from the Court." To this Dudley answered, "I know no court here in being till the king's Court be in order and settled." To the council he declared that the alterations in the administration of government would be few, and [would be made as plain and easy as possible.]

The court then adjourned till October. Says Sewall, "The adjournment which had been agreed before, . . . was declared by the weeping Marshal General. Many tears shed

[1] Sewall, Diary, I. 138.

[2] Proc. Mass. Hist. Soc., September, 1864; Toppan, I. 276 n.

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in prayer and at parting." Thus the government of Massachusetts under the old charter came to an end. The political indifference of many is evident. Even Sewall did not favor a protest, but well expressed the perplexity even of the leaders when he queried, "The foundations being destroyed, what can the righteous do?" Three days later a part of the court, in a paper signed by Secretary Rawson,[1] replied to the president that it found in the commission for the new government no certain rule for the administration of justice, and the provisions it did contain on that subject seemed too arbitrary. It found also that "subjects are abridged of their libertyes as Englishmen both in the matters of legislation and in the Law of Taxes, and indeed the whole unquestioned privilege of the subject transferred upon yourselves, there not being the least mention of an assembly in the Commission." Still, though they could not assent to the change, they hoped to demean themselves as loyal subjects of the king and in the meantime would pray for relief.[2]

On May 25 the president and council held their first[3] meeting. An exemplification of the judgment against the charter was read, as was the commission of government directed to the president and council. The oaths of allegiance and of office were then taken. After this the president and council took their seats upon the bench, and the president addressed the people who were assembled. After stating that the council, "all excuses set aside," were required to serve the king in the government of New England, he called upon all subjects to render them their loyal and dutiful support. He said that the changes in the methods of government would be few, and they would be made as plain and easy as possible. The recognition of freedom of worship he referred to as an assurance of the just intentions of the king. But if any imagined that license would be given to vice or immorality, they would find the contrary to be true.

[1] 2 Proc. Mass. Hist. Soc. XIII. 237.
[2] Mass. Col. Recs. V. 516; Hutch. Hist. I. 342; Sewall, Diary, I. 140.
[3] The Dudley Records, 2 Proc. of Mass. Hist. Soc. XIII. 226.

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After the proclamation[1] of the government had been read and ordered to be published by beat of drum in Boston and sent to all the other towns, the transaction of business according to the forms of the royal province was begun. Justices of the peace were appointed for the three counties of Massachusetts and for the provinces of Maine and New Hampshire. Dates were set for the holding of the county courts, and regulations were made concerning their jurisdiction and concerning procedure in the transaction of all kinds of legal business. In deference to the custom of New England a proclamation was issued empowering justices of the peace, as well as ministers, to celebrate marriages. For the first time in New England history, provision was specially made by law for keeping a record of births, deaths, and marriages. Military commissions were ordered to be drawn, and Randolph had brought over some English flags for use. William Stoughton was appointed deputy president, and John Usher, a Boston merchant and a member of the council, was made treasurer of the province.

On June 2, in accordance with the commission, orders were passed for the continuance of the existing customs and excise, provision being also made that the rules for their collection which were already in force should be obeyed. The powder duty was ordered to be collected. Constables were required to bring in the rates as usual. A table of judicial fees was also issued. Thus the fiscal systems of the colonies which were combined into the new province were continued. The bounds[2] of townships were also confirmed. The right of towns to hold elections and to instruct their officials respecting the management of town affairs was recognized. All contracts which had been made between towns and their ministers, schoolmasters, or any other parties were confirmed. Committees which had been appointed for the government of villages and outlying plantations were continued. A committee was appointed by the council to revise the laws, but this was not completed until after the arrival

[1] Laws of New Hampshire, I. 99; Dudley Recs. 228.
[2] Dudley Recs. 240.

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of Governor Andros,[1] when a new and larger body was designated.

The comparatively liberal spirit of the president and the council is also indicated by an instruction[2] which was given to Robert Mason, when in June he returned to England as the bearer of an address to the king and of a letter to the committee of trade. It was that the royal interests, as well as the prosperity of the province, would be advanced if the right to hold assemblies was granted. The need of a mint or of some provision for a local coinage was also suggested. In the letter to the committee of trade the request was made that their lordships would provide for the prompt filling of vacancies in the council; while, as a further indication of the new spirit of cordial support which was to animate the government of New England, they told what care their council had taken to guard the rights of the king, to enforce the acts of trade, and to place the control of the militia in trusted hands.

The council held frequent sessions, these often continuing through two successive days. They were held every week or once in two weeks. The work of the council was partly judicial and partly administrative in character. It was such as the board of assistants had done before the revocation of the charter. Of legislation in the proper sense of the term the council attempted nothing. In this, as in all other respects, the temporary character of the government by president and council is apparent. The only important removal which was made was that of Danforth from the presidency of the council of Maine; but that was unavoidable. Bulkely refused to act as commander of the castle, and Wait Winthrop was appointed in his place. Dudley showed throughout that he intended to conciliate the people of Massachusetts as much as possible. Neither from him, nor from the other New England men who composed the council, could great innovations be expected. They all acted from the first upon the knowledge that their government was provisional.

The change which awakened the greatest interest among

[1] Dudley Recs., 2 Proc. Mass. Hist. Soc. XIII. 256; Andros Recs., Proc. Am. Antiq. Soc., New Series, XIII. 244.

[2] *Ibid.* 241, 244.

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the people at large was the beginning of Anglican worship in Boston. Nothing of that character had been known to the generation then living. So far as we are informed, the Prayer Book had never been used in public worship in any of the Puritan colonies. The professions which were made at the time of the migration had proved a dead letter. But the English authorities, especially Randolph, had made it a special care to procure a clergyman of the Established Church. The one secured was Robert Ratcliff, and he came in the frigate with Randolph. He had been recommended by the Bishop of London, and brought with him a letter from the lords of trade. He was provided with prayer books and the usual accessories which were required in the worship of the English Church.

The curious interest which was felt in the doings of Mr. Ratcliff is indicated by Sewall.[1] On May 18 Sewall notes that two weddings were celebrated by "Mr. Randolph's chaplain," one at Mr. Shrimpton's and the other at the town house. In each case a ring was borrowed for the occasion. When, on the second day of its session, the minister applied to the council for the assignment of a place in which to hold service, Mason and Randolph proposed that he might be admitted to one of the three churches in Boston. This was refused, and he was granted "the east end of the Townhouse, where the Deputies used to meet, until those who desire his ministry should provide a fitter place."[2]

On the following Sunday Sewall records that his son read to him in course the 26th chapter of Isaiah and they then sang the 141st Psalm, "both exceedingly suited to this day, wherein there is to be worship according to the Church of England, as t'is called, in the Town House, by Countenance of Authority."[3] He was later informed that "many crowded thither," drawn of course by curiosity; but they found that as yet no pulpit was provided, though the minister preached both forenoon and afternoon. Randolph wrote soon after to the Archbishop of Canterbury, that the room in the town

[1] Sewall, Diary, I. 139.

[2] Sewall, 141. Reference to this does not appear in the Minutes of the Council.

[3] *Ibid.* 142.

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house had been found too small and that services had been removed to the exchange. But some of the people had been heard to call "our minister Baal's priest, and one of their ministers from the pulpit called our praiers leeks, garlick and trash."

Randolph was also much troubled by his inability to secure from the president and council an appropriation for the support of Mr. Ratcliff. He thought that 20*s.* per week might be taken from the collections in each of the other three churches for the purpose. He soon began to look with greedy eyes on the fund which had been accumulated by the Society for the Propagation of the Gospel in New England, and desired that a part of it should be used for the building of a church. But all of these plans failed, and the council, as well as all others, were resolved that Anglican worship should be supported by those who chose to attend upon it. Randolph noted with sorrow the fact that Mr. Mason and himself were the only members of the council who were Anglicans, while among more than sixty officers in the militia there were only two captains and two or three inferior officers who were not members of the churches of New England or constant attendants upon their services.[1] Dudley, he wrote, while in London had pretended to be of the Church of England, "yet since he is made President, courts and keeps private cabals with these factious ministers and others, who, in the time of Monmouth's Rebellion refused to pray for his Majesty." The utter weakness of the Anglican cause in New England made Randolph despair, and set him longing for the arrival of a royal governor, whose influence and prestige he hoped would galvanize the cause into life and activity.

But there were other reasons which added to the dissatisfaction that soon became the dominant note in Randolph's correspondence. Among these he laid special emphasis on his inability to secure from Dudley and the council what he considered proper support in his efforts to regulate trade.

[1] Toppan, IV. 89, 90, 101, 114

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In his collisions with the department of the navy, as represented by Captain George and his men, he claimed that he was not properly upheld. To this reference has been made in another connection. He also complained that his business as secretary and register was taken from him and bestowed on others, that he was unable to get possession of the records which belonged to that office, and that his fees from that service suffered materially. After Andros's arrival he tried to recover from Dudley something under this head, but his effort was unsuccessful.[1]

Now Randolph had brought his wife to the colony, and even by the captain of the frigate an outrageous scandal was circulated affecting her reputation.[2] In part to the sufferings they both endured he attributed her death, about a year later. For this accumulation of troubles Randolph now held Dudley largely responsible. In his letters he charged the president with being "a man of a base, servile and anti-monarchial principle." He was declared to be in alliance with Randolph's foes and with the enemies of the English government. He could not be trusted. Randolph assumed the same to be true in the case of several members of the council. Stoughton, he said, was "of the old leaven"; Richards, "a man not to be trusted in public business"; and Hinckley, ex-governor of Plymouth, he pronounced "a rigid Independent."[3] Others were like these, and, if Randolph's representations are worthy of belief, the council was torn by dissensions, and the situation little improved by the substitution of it for government under the charter. He was also worried by the arrival of some nonconformist emigrants from Scotland, with others from Ireland and elsewhere, — fugitives from the Catholic reaction, which was then in progress. He feared that a large migration of this character might result.[4] His fears and animosities Randolph, as usual, fully stated in his letters to the committee of trade, to Blathwayt and to Archbishop Sancroft. His feelings furnished him with

[1] Toppan, IV. 115, 116, 120, 140.
[2] *Ibid.* 93, 107.
[3] *Ibid.* 131; Hutch. Papers. II. 295.
[4] Toppan, IV., 113, 117.

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arguments for the speedy despatch of a royal governor to New England, for in Randolph's opinion no security was to be expected till this was done.

Randolph's anxieties were relieved by the arrival of Sir Edmund Andros in Boston, late in December, 1686, with a commission and instructions as governor of all New England except Rhode Island and Connecticut. Save in a few points which related to conditions that were peculiar to New England, the commission and instructions were identical with those which at the same time[1] were issued to Governor Dongan of New York. The evident purpose of the crown in granting them was to transplant in New England the system of government which was already in existence in New York. The wide difference between the two sections is proven by the changes which that policy was intended to secure in New England, and by the aversion with which the policy was viewed by the majority of New Englanders.

New York had not yet become accustomed to a legislative assembly. Such assemblies were the centre and foundation of the New England system. In New York the executive legislated for the province, and appropriated, collected, and expended the revenue. In New England these activities originated with the representative assemblies. In New York conformity with English law and recognition of the sovereignty of the crown were sought as objects of prime importance. In New England this had been avoided or unwillingly acknowledged. The New York executive welcomed the support of the English government, and willingly reported to it all transactions in the province. When Andros came that obligation was for the first time imposed upon the Puritan colonies of New England. If the régime which he was sent to establish continued, not only would the oath of allegiance be generally taken and laws submitted to the king for his approval, but suits which involved £300 or

[1] The Commission is printed in full in R. I. Col. Recs. III. 212, and in Laws of New Hampshire, I. 146. The instructions are printed only in the Laws of New Hampshire, I. 155. The commission of Andros passed the privy seal June 3, and that of Dongan passed the great seal June 10, 1686.

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more might be transferred to England on appeal. In New York also the king was expressly recognized as the source of land titles; land was granted to individuals and was legally, if not actually, subject to a quit rent. In New England land had been granted to corporate bodies known as towns, and was not subject to a quit rent. Under this system much land within easy reach of settlements might remain unoccupied and unimproved for indefinite periods and yet not be subject to grant except by the towns themselves. If favorites and officials were to be supplied with valuable tracts conveniently located, if the system of quit rents was to be made universal, a policy like that of enclosures in England might be deemed necessary. Finally, the adherent of the English Church was welcomed in New York, while in Massachusetts he was almost abhorred.

Those who would understand what Andros attempted in New England should study his career in New York and the Jerseys. It will appear that his method in the two administrations was substantially the same. He failed in New England because the New York system, as it then was, and the spirit of royal administration which was substantially in harmony therewith, were so different from the conditions that were original in New England.

The intention of the crown, in sending Andros again to America, was to organize the dominion of New England. This was intended to include all the colonies north and east of the Delaware river. It was to comprise, in other words, the territory which in 1620 had been granted to the New England Council; or, to go still further back, the northern Virginia which had made its first appearance on the map with the issue of the charters of 1606 and 1609. The plan was a revival of the dream of Sir Ferdinando Gorges. Between the close of 1686 and the spring of 1689 Sir Edmund Andros labored to establish the dominion which Gorges had failed to erect in 1636. Had the plan succeeded, we may imagine that New York and not Massachusetts would have ultimately proved the centre of the Dominion and would have been the seat of its government. At any rate, the spirit of its administrative system would have animated the

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whole. We may further imagine that, if tendencies which were dominant in 1685 had triumphed, Virginia would soon have formed the nucleus around which the provinces south of the fortieth parallel would have been gathered, and the system originally foreshadowed in the charter of 1606 would have been realized.

The state system of America, like that of Europe, has exhibited in its development variations upon a few original types. To the crown lawyer and to the statesman of the autocratic temper this scheme of colonial union, planned and executed by the crown, was attractive and inspiring. If found practicable, it would remove many obstacles from the path of administrators. But how had later events, in which crown as well as colonist had borne a share, contributed to subdivide the ancient territories and to plant there peoples and institutions of varying types! Would it be possible, by any administrative device, to overcome the divergences of these colonies and weld them into an organic whole? The difficulties attending this task in New England would be great. How much greater would they be when it came to the uniting of New England with New York and the Jerseys?

When Randolph was sent to New England in 1685 the delivery of the commission to Dudley and the council was only one part of his errand. He was also intrusted with writs of *quo warranto* against the corporations of Rhode Island and Connecticut. When, in November, 1684,[1] the committee of trade and plantations was considering the organization of New England under a president and council, it noted the fact that the charters of Rhode Island and Connecticut were not yet vacated. Randolph, Blathwayt, and their associates were aware[2] that the coterie of Quakers and of friends of Connecticut which was now managing the affairs of Rhode Island would probably not stand suit if a writ was issued against them. In this they were not deceived.

During the early months of 1685 the authorities in Eng-

[1] Toppan, III. 325. [2] *Ibid.* IV. 4.

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land were considering [1] the question, whether process should be immediately issued against Rhode Island and Connecticut or whether it should be delayed until the general governor was sent over. This proves that the recall of the charters of those colonies was from the first regarded as an incident of the permanent adjustment of New England affairs. Owing very likely to the delay caused by the death of Charles II and the change of resolution concerning the appointment of Colonel Kirke, it was decided not to wait until the appointment of a general governor. In May, 1685, Randolph was ordered to prepare articles of misdemeanor against the two colonies in question, as he had previously done in the case of Massachusetts, on the strength of which writs of *quo warranto* might be issued. These, in somewhat loose and perfunctory terms, he submitted in the following July. [2]

The government of Rhode Island was charged with levying taxes illegally, with denying appeals to the king, with passing laws repugnant to those of England and refusing to allow the laws of England to be pleaded in her courts. It was also charged that her representatives and magistrates did not take the oaths required by law, and that her inhabitants were guilty of violations of the acts of trade. Connecticut was charged with passing laws which were repugnant to those of England, with imposing fines on the inhabitants and using the proceeds for the support of its government. She was declared to have forbidden Anglicans to celebrate worship according to the ritual of their church; to have excluded inhabitants from justice in their courts and kept the government in the hands of the Independent party to the exclusion of all men of known loyalty.

The committee of trade having reported that these charges furnished a sufficient basis for the issue of an information, the council ordered that Attorney General Sawyer should proceed. Against Connecticut two writs were issued, one dated July 6 and the other August 3, 1685. The first writ required the appearance of the governor and company before

[1] Toppan, IV. 14.

[2] *Ibid.* 21, 22; Col. Recs. of R. I. III. 175–178; Col. Recs. of Conn. III. 347; Colonial Papers, 1685–1688, 65.

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the king, wherever he should be in England, on November 18, 1685. The second writ was returnable April 19, 1686. Writs were at the same time issued against the proprietors of the two Jerseys and of the Three Counties on the Delaware, but these latter were served, if at all, in England.[1]

The writ against Rhode Island was not issued until the spring of 1686. A copy of it was received through Randolph on June 22. As soon as it was served Rhode Island made formal submission to the crown.[2] This act was accompanied with a request that the inhabitants might still enjoy their religious freedom, that Newport might continue a free port, and that no persons should be appointed to office among them whose character suited not the constitution of the colony. This action removed all difficulties connected with the return of the writ and trial in England. The submission was accepted and, on the arrival of Andros, Rhode Island was at once incorporated as a part of the dominion of New England.

But Connecticut was not yet inclined to submit, and in its case the English authorities found themselves involved in the same technical difficulties connected with the service of the writ which Randolph had foreseen, and by which they had been baffled in the suit against Massachusetts. Though the second of the two writs against Connecticut was returnable in April, 1686, Randolph, owing to a delay of several months in sailing, did not arrive with it in Boston until May of that same year. He then wrote to the governor and council with the information that he had writs against them and asked to meet some of their magistrates in the Narragansett country, whither he was going to attend the establishment of the authority of President Dudley and his council in the King's Province. In this letter he suggested the argument which in the end was to prove decisive; that, if they did not submit, the colony would be divided and the western half of it would be annexed to New York. No meeting in the Narra-

[1] Colonial Papers, 1685–1688, 73, 77; Col. Recs. of Conn. III. 350; Toppan, IV. 37.

[2] Laws of New Hampshire, I. 167, 168; Col. Recs. of R. I. III. 193; Colonial Papers, 1685–1688, 173, 182, 211.

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gansett country occurred, but Randolph served the writ, July 20, 1686, though at the time it was apparent that the period set for the return in England had already expired and for that reason the service was legally [1] futile.

The general court was called together in special session on July 6 and again on July 28, to consider the question.[2] It was resolved to answer the writ through counsel and also to petition the king for the continuance of their bounds and liberties. William Whiting of London was appointed agent and authorized to employ counsel-at-law and defend the charter. "You are seriously to consider and devise," he was instructed, "whether there be not a lapse in law of the said writs, and so not obliging [us] to appear and make answer until new writs (if any) be ordered against us." The notification which they had received from the under-sheriff of Middlesex they thought was not binding; but, if it was so, a defence should be made, and a plea submitted based on the terms of the charter and on accepted rules as to their interpretation. The counsel should also ask that sufficient time be allowed for them to answer charges. If judgment was likely to be pronounced, then by petition or in some other way they should secure its suspension until the corporation was able to speak for itself or make further addresses to the king. If this was not possible, they would address themselves to the task of preventing a division of the colony. In the petition to the king he was asked to pardon all the mistakes and failures of the past and to cause legal proceedings to be abandoned. Neither in this, nor in the document which accompanied it and which stated the reasons why Connecticut should not be divided, was any reference made to the possibility of surrender. But with the instructions to Whiting went the draft of another address, which was apparently intended for presentation in case judgment against the charter should be rendered. In this the resolve was expressed to submit to the will of the king, if he determined to change their civil government, asking only that liberty of conscience might be continued, that their property in land

[1] Conn. Col. Recs. III. 356–358. [2] *Ibid.* 207–213.

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might be confirmed, that they might have convenient ports of entry, and that their trade with the neighboring colonies might be free from all duties except those for which provision was made by a statute.[1]

But, on October 23, 1686, a third *quo warranto* was issued, identical with the first two and returnable February 9, 1687. This was served on December 28, 1686. Eight days before this Andros had arrived in Boston, bringing among his instructions a clause providing that in case Connecticut "shall be induced to make surrender of their charter . . . to receive such surrender" and take that colony under his government. Upon receiving notice of this from Andros and after the service of the third writ, a letter was sent by the general court to the Earl of Sunderland, then secretary of state, setting forth that it was impossible for them to appear for trial as early as the beginning of February. They said that they heartily desired to remain as they were; "but if his Majesty's royal purpose be otherwise to dispose of us, we shall, as in duty bound, submit to his royal commands." They simply asked, in case a change became inevitable, that they might be joined with the New England colonies.[2] Statements to the same general effect were also made in letters from the authorities of Connecticut to Andros.

Though the surrender of a charter, in order to be effective in law, must be under the seal of the corporation, this admission of an intention to submit was at once accepted in England as for practical purposes sufficient. Upon receiving the letter from Connecticut *quo warranto* proceedings were at once dropped and an order[3] from the privy council was sent to Andros to take Connecticut under his government and appoint Treat and Allyn members of the council of New England. The correspondence between Andros and the government of Connecticut had continued through the spring and summer, but without apparent progress toward

[1] Conn. Col. Recs. III. 370–375.

[2] *Ibid.* 376–379; Colonial Papers, 1685–1688, 349–352. The letter to Sunderland is not in the Calendar, but is printed by Trumbull from Chalmers, Annals, 306.

[3] Conn. Col. Recs. III. 386, 387; Colonial Papers, 1685–1688, 383, 387.

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a result. Governor Dongan had also exerted himself for the purpose of inducing Connecticut to join New York, and letters had been exchanged on the subject, but without agreement.[1] As soon as the decision of the home government reached Andros he started for Hartford.[2] On arriving there he met the governor and assistants, and arrangements for the submission were made. The next morning, October 31, in the presence of the general court, Andros had his commission read, and assured them that all their liberties should be preserved. Treat and Allyn then received the oath as councillors, and the establishment of the new government was formally accepted by the general court. After organizing courts at Hartford, and visiting the other counties, where tribunals were also organized, the governor returned to Boston.

In the man-of-war with Andros, December 20, 1686,[3] came sixty regulars — the "redcoats," whose presence had never before been seen in New England. The governor's commission was read, and he at once took the oath of allegiance. The oaths of office and allegiance were administered to those of the councillors who were present. Other members were later sworn, until the council, prior to the annexation of Connecticut, numbered twenty-seven. Edward Randolph, who held the office of secretary and register until May, 1687, when he leased it to John West[4] of New York as his deputy, for £150 a year, continued to hold his seat in the council. So did nearly all of the former members. At the third session Walter Clarke and the members from Rhode Island took their seats. The governor demanded of them the delivery of their charter. They replied that it was at the governor's house in Newport, and would be forthcoming when sent for. Andros ordered that it should be brought and delivered into the custody of the

[1] N. Y. Col. Docs. III. 385–387; Conn. Col. Recs. III. 366, 386.

[2] Bulkeley's Willand Doom, Colls. Conn. Hist. Soc. III.; Colonial Papers, 1685–1688, 455, 463; Conn. Col. Recs. III. 248.

[3] Sewall, Diary, I. 160; Andros Records, in Proc. of Am. Antiq. Soc., New Series, XIII. 240, 268, 453–499.

[4] *Ibid.* 268; Toppan, IV. 155, 162.

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secretary. Proclamations were issued confirming officers in their places throughout the colonies which composed the dominion. But these were soon followed by an order that new commissions be made out for them. Town officers were still to be elected and were to act within their jurisdictions as formerly. The issue of new commissions of course gave an opportunity for large changes in the personnel of office holders, appointments both in the civil and the military service being generally made on nomination by members of the council.[1] Town officers continued to be elected as usual. The council, had all of its members ever been present, would have equalled in number the lower houses in many of the colonial assemblies. But it rarely happened that even approximately the whole number was in attendance, and its business was usually done by from six to ten members. In reality, therefore, though it was empowered to legislate for all New England, its active membership was little larger than that of the ordinary provincial council. The only security for its independence lay in the fact that all its members, except Randolph, were residents of New England. But this was scarcely adequate, for its methods of doing business were largely determined by the governor. His influence over its sessions, as well as over its members outside the formal sessions, was likely to be very great.

The forms of a legislative body were maintained, at least to an extent, by the appointment of committees to prepare measures and by debate upon them when they were submitted. Thus, on December 31, a committee with Dudley at its head, and the quorum of which consisted of one member from each colony, was appointed to report on methods of administering justice; on courts, their times and places of session, their jurisdiction, forms, and fees. This committee reported to the next session as ordered, and after a debate on the several articles Mr. Wharton and the secretary were instructed to arrange them and submit them again to the council. We find nothing more of importance on the subject, except an order

[1] Andros Recs. 244, 250.

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that courts should continue to be held at the usual times and places in Plymouth and Rhode Island, until the 24th of February. At that time a bill for establishing courts was debated at considerable length, the governor refusing to consent that trials about titles to land should be held in King's Province until the pleasure of the king was known. At later sessions the dates on which the quarterly courts should be held throughout the dominion were fixed, and it was ordered that all writs should be issued in the king's name. Long debates followed between proprietors of the Narragansett country and members from Rhode Island over the place of holding the grand assizes there. Finally, the bill was passed by the governor, December, 1687.[1] It provided for a court of quarter sessions and an inferior court of common pleas within each county, and for a superior court of judicature, which should possess the highest common law jurisdiction throughout the whole dominion. Provision was also made for a court of chancery, and for the sessions of all the courts. Their jurisdiction and procedure were to be as near like those of the corresponding courts in England as possible. Appeals to the crown were fully provided for. Dudley, Stoughton, and Bulkely were appointed judges of the superior court. Dudley, acting as chief justice, received a salary of £150 and the others £120 each.[2] Salaries were paid out of the revenue of the territory. When Connecticut was annexed, the judicial system thus created was extended over that colony also. It is interesting to note that as long as this arrangement continued the towns of Hampshire county in Massachusetts had to repair to Hartford for the trial of all their cases which came within the jurisdiction of the superior court.[3]

An even more important task than that of the establishment of courts of justice was that of providing a revenue. The former revenue could only be continued for a time. It soon became necessary that positive provision should be made for the levy of taxes, and that by an appointed, not an elected body. On January 4, 1687, it was ordered that the usual

[1] The laws enacted by Andros and his council are printed in Conn. Col. Recs. III. 402–436.

[2] Andros Recs. 267, 472.

[3] Conn. Col. Recs. III. 403, 404.

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country rate of a penny in the pound be collected throughout the dominion, and an instruction was issued to the treasurer accordingly. Later, provision was made for a capitation tax, an excise, and an import duty.[1] The whole was then combined in one bill which, in the session of March 1, was warmly debated. Some urged that the valuation set upon horses and oxen in the bill was too high, but the reply was made that it was taken from the printed law under the title public charges. Objection was also made that a proposed levy of a halfpenny an acre on pasture land was not mentioned in the law book. Stoughton, Hinckley, Wharton, and Walley, in order to secure amendments, objected to having the bill passed at that session. It, however, was read a second time and ordered to be engrossed. A proviso was also introduced that it should continue in force until the governor, with the advice of the council, should establish other rates and taxes.

We are told by Stoughton and those councillors who were associated with him in writing the[2] "Narrative of Proceedings of Sir Edmond Androsse and his complices," that a very considerable number of the members were opposed to this bill. But the governor supported it with not a little heat, falling back for justification, as he had been wont to do in New York, on his instructions. He prolonged the sessions, they thought unnecessarily, because of it. When they broke up, they did not think the bill agreed to. But the next day, when it was brought in engrossed, he quietly signed it, "without any counting of voices either then or the day before, which was the more needful because some did continue still to make their objections, others that had spoken against the bill the day before declaring their adherence to what they had then said." Others sat still, not because they were convinced, but because they saw it was of no use to oppose. The first resistance which the new government encountered was in the collection of the country rate provided for by this law. Nearly all the towns of Essex county, Massachusetts, and some elsewhere, refused to pay the rate. In Ipswich,[3] for example, which was

[1] Andros Recs. 255, 256, 258; Conn. Col. Recs. III. 405.

[2] Andros Tracts, I. 140.

[3] *Ibid.* I. 83 *et seq.*; Toppan, IV. 171 *et seq.*

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the largest town of the northeast, when the town meeting met under a warrant from Treasurer Usher to choose a commissioner to act with the selectmen in assessing the rates, it was resolved that such an act would be an infringement of their liberties as freeborn Englishmen, and inconsistent with the statutes of the "land," according to which no taxes were to be levied except with the consent of an assembly elected by the freeholders for that purpose. A commissioner was not chosen and the selectmen were ordered not to proceed without authority from an assembly. John Wise, the minister, and John Appleton, who had previously been an assistant, were the leaders in the act of resistance. They with four others were arrested and cast into jail at Boston. The writ of *habeas corpus* having been denied, after imprisonment they were brought to trial before Dudley, Stoughton, Usher, and Randolph as judges, and a jury. The accused pleaded that the old law of assessment had been repealed by the general court four years before and that by Magna Carta and later statutes they were secured against arbitrary levies. Dudley, who was chief justice, told the prisoners that they must not think the laws of England followed them to the ends of the earth. Wise testified that the justice upon examination said to him, "You have no more privileges left you than not to be sold for slaves," though it requires evidence of unusual strength to establish the credibility of such a statement. The jury was composed partly of strangers and, the accused claimed, of non-freeholders, introduced into it "to serve the present turn." All the accused were pronounced guilty and remanded to prison, where they were kept three weeks awaiting judgment. Then they were sentenced. Wise was suspended from ministerial functions, was fined £50 and costs, and put under bonds for good behavior during one year. The other prisoners were declared disqualified to hold office, fined and put under bonds. The costs of the trial, in fees and fines, was estimated at £400.

Stoughton and his fellow councillors criticise in a most suggestive way the legislative methods to which Andros commonly resorted. They say that the way in which bills

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were proposed and passed was uncertain, for after they had become well established in office, the governor and secretary neglected to notify the councillors of the sessions wherein laws were to be passed. Bills were also framed in private and sprung upon the council without warning. No care was taken to count favorable or adverse votes, and orders were recorded as passed which were really not approved by the majority of the councillors. When members urged that the consideration of important matters might be postponed until a fuller attendance could be secured, such motions were always received by the governor with displeasure; "So that it might be too truly affirmed, that in effect four or five persons, and those not so favorably inclined and disposed as were to be wished for, bear the Rule over and gave law to a Territory the largest and most considerable of any belonging to the Dominion of the crown."

Soon after the arrival of Andros, as already stated, a committee was appointed to extract from the law books of the colonies a collection of laws which, when devised, should serve as a code for the dominion. Its members were Dudley, Stoughton, Wharton, Hinckley, Walley, Clarke, Coggeshall, a fair representation not only of the ability of the council, but of the colonies which up to that time had been united in the dominion. When these laws came before the council for consideration, the one concerning towns and the contracts which they had made with their ministers and schoolmasters was first read. Thereupon Walter Clarke objected that the ministers of New England were as truly dissenters as were the Quakers, and therefore ought to be supported by voluntary contributions. To this Hinckley, Walley, and others strongly objected, alleging that a principal condition which was imposed upon towns at their creation was the maintenance of a settled ministry. At the instance of the governor the discussion was postponed, but on the second session after, when the title covering cornfields and fences was under consideration, Hinckley produced a paper and read it in council. At this Andros took offence and demanded the paper. Clarke also moved that all persons in the townships who had not actually agreed to support the minister should

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be left to contribute or not as they chose. This, however, does not seem to have come to a vote.

Andros and his associates had already approached the towns from more than one direction, and there were indications that these jurisdictions would prove to be the final, perhaps the insuperable, obstacle in their path. The plan which had earlier been formed to compile a code of New England law was abandoned when, in May, 1687, West became secretary, because as things were it was found that in such a compilation a considerable place must be given to the towns. When a far-reaching attack upon that feature of New England institutions was contemplated, it would be plainly unwise to give added sanction to the towns by incorporating their law in a new code.

The point at which the governor and the most influential councillors directly aimed was land titles. In the town grants and the deeds which had hitherto been issued in New England no adequate recognition had been made of the fact that, in the colonies, as elsewhere, the king was the source of rights to land. In a general way it was of course understood that their origin was in the king, and that view had been firmly maintained in the controversy with Roger Williams. But in legal documents the line of connection had rarely, if ever, been traced back beyond the colony charter. Grants had commonly been made without the use of the colony seal, though the charter required that it should be used in all transactions of the company.[1] In the formulation of town grants, in the system of town allotments by which land generally passed into private ownership, there was much in New England practice which, from the standpoint of English law, was irregular or at least novel and undefined. The towns were not expressly incorporated, and this quality it was beyond the power of the governments in the corporate colonies to grant them. This, said Randolph, left them in the same legal condition as villages in England and without authority to hold[2] land. If this was true and the Andros government should seek to act upon it, not only could they

[1] Andros Tracts, II. 180, 284. [2] Toppan, IV. 205, 206.

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overthrow the town system, but the validity of land titles throughout New England would be seriously impaired. In comparison with such an attack as this upon New England institutions, the levy of taxes under executive authority alone would be superficial. At any rate, the situation was such as to call for a general examination of patents and the grant at least of many new ones. This was a process not uncommon in the provinces, and with it Andros had become familiar in New York. It gave the desired occasion not only for the levy of fees for administrative duties performed during the process, but for the imposition of a quit rent as a condition of the regrants.

Within the town grants lay also many tracts of unoccupied or unimproved land — town necks, stinted commons, pastures and woodland — which had not yet been divided into lots and granted to individual owners.[1] In most or all instances these areas were subject to some form of joint utilization by the town itself where they were situated or by a group of proprietors. In not a few cases the poor inhabitants of towns profited by the use of such commons. They were tracts such as those which the large farmers and graziers of England and Ireland had long been seeking to appropriate in various ways and especially by means of enclosure acts. Their existence in New England soon attracted the attention of needy and greedy councillors, like Randolph, and West, Palmer, and Graham of the New York group. Randolph in particular began to petition for grants from these commons in a number of towns in Massachusetts and Rhode Island, though evidence is lacking that Andros sought personal enrichment in this way. In this connection resurveys were called for, a course of policy which West and Palmer had been pursuing, greatly to their own profit and to that of Graham, in the settlements about Pemaquid. The possession of islands was sought in similar manner. In this way another form of attack upon the towns and upon the land system of New England was perfected.

When the New Englanders came to realize what was in-

[1] See Vol. I. of this work, chapter XI.

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tended, they were filled with alarm. Though not more than twenty amended grants passed the seal during the entire administration of Andros,[1] to the colonists every thing seemed to be unsettled. A general inquiry into land titles must necessarily create much more disturbance in New England than in any province, whether proprietary or royal, because of the peculiar nature of the town system and the absence of quit rents. From a system of tenant right in any form the New Englanders had sought to escape, and almost nothing which suggested it had been allowed to find a lodgment among them. When Joseph Lynde of Charlestown traced the title of his lands back to a grant of the general court and to an Indian deed, Andros told him that it was "nothing worth if that were all." The signatures of Indians he declared to be of no more account "than a scratch with a Bear's paw."[2] As Lynde owned several parcels of land in the neighboring counties, Secretary West told him he must take out as many patents as there were counties, if not towns, involved. When the cost of this made him pause, a writ of intrusion upon one of the tracts was issued. Lynde then gave Graham, the attorney general, £3 and offered £10 in addition, with the payment of court charges, if he would let the suit drop. But in this he was unsuccessful, and was told by Graham that writs of intrusion would be very generally issued. The officials repeatedly declared in rough and imperious fashion that all land in New England was the king's, this being emphatically true since the revocation of the charter. When confronted with a situation like this, it was not surprising that the leaders in Massachusetts felt much more inclined to emphasize the importance of Indian titles than their ancestors had seemed to do when the question was argued with Roger Williams. As was to be expected, the clergymen took a hand, and in a famous debate with Andros, who was supported by West, Palmer, and Graham, Rev. John Higginson of Salem told them that, "so far as I understood, we received only the right and power of Government from the King's Charter, . . . but the right of the Land and Soil

[1] Report of Andros, in N. Y. Col. Docs. III. 722.
[2] Andros Tracts, I. 91.

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we had received from God according to his Grand Charter to the Sons of Adam and Noah, and with the consent of the Native Inhabitants." [1]

When Randolph petitioned for Nahant neck, which belonged to the town of Lynn, and for commons in Cambridge, the defendants were met with the statement that there was no such thing as a town in New England. Graham even went so far as to state that Boston was not a town. Randolph, in answer to the Cambridge remonstrants, said that in case they could produce a royal grant to any person or persons and from such persons a legal conveyance to the town, and that it (the town) was sufficient to receive a grant of such lands, then he would cease prosecution. Otherwise, he conceived that the right still remained in the king and he prayed a grant. The attempt to seize Deer island in Boston harbor and Clark's island at Plymouth affected directly the rights of the colony and of its lessees. The number of writs of intrusion which were actually issued or suggested threatened endless suits, the trials of which would necessitate many long journeys and expenses of uncertain amounts for the defendants,[2] though it was already apparent that it would be no easier to secure juries which would convict the accused in these suits, than it had been in the revenue cases which Randolph had brought to trial. Only the superior court, with Dudley as presiding judge, could be trusted to do the government's work.

In March, 1688, by the exercise, it is said, of unusually strong executive pressure, a law was passed which prohibited the holding of town meetings oftener than once a year, and that for the election of town officers.[3] Among the officers chosen should be the commissioner from each town whose duty it was to coöperate in the assessment of county rates. Selectmen, in boards of eight, should be elected for terms

[1] Andros Tracts, I. 90, 124. Another theorist, presumably Samuel Sewall, sought to clinch the point by the argument that Balaam's ass "ingenously acknowledged that her master (though an infidel) had a Property in, and right of Dominion over, her. Numb. 22, 30."

[2] *Ibid.* 91–100; Toppan, IV. 171, 201–232.

[3] Conn. Col. Recs. III. 427.

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of two years, one-half going out of office annually. The management of town affairs should rest wholly in the hands of these and the other town officers, town rates even being levied by them under warrants from the county justices, who were appointees of the governor and council. The object of this legislation was to deprive the towns, if possible, of their capacity to become active political centres, and thus to remove the most serious hindrance to the triumph of the government's policy. During the month following the passage of this act, and in imitation of a measure to which the people of New Hampshire had already resorted under similar circumstances, Rev. Increase Mather, president of the college and an active opponent of Randolph and Andros, went in disguise on board ship and sailed as agent for England. Such was the prospect which confronted both rulers and ruled when Andros departed for New York and the Jerseys to receive their government and annex them to the dominion.

This change was effected during the month of August, 1688.[1] By steps which the scanty documents of the time do not clearly reveal, the proprietors of both East and West Jersey had been induced to surrender the rights of government which they had so long struggled, though with indifferent success, to assert over their provinces. Dongan was ordered to resign the governorship of New York. A new commission and set of instructions had been prepared extending the authority which Andros had been exercising in New England proper as far south as the Delaware river and the fortieth parallel, and, with the exception of Pennsylvania and the Lower Counties, comprising the territory westward to the South Sea and northward to the river of Canada. To this vast region the name of "Our Territory and Dominion of New England in America" was now expressly given. Francis Nicholson was appointed by the king to be lieutenant governor of the dominion, and New York was designated as his residence. In instructions to Andros, a proportionate number was added to the council from New York and the

[1] N. Y. Col. Docs. III. 537, 543, 553, 554, 567; Brodhead, Hist. of New York, II. 512 *et seq.*; N. J. Arch. II, 26, 37.

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Jerseys. The powers which had been exercised by the governor general and council under the commission of 1686 were extended over the entire territory or vice-royalty. The responsibility of Andros's position, as well as its dignity, was much increased by the fact that he now had the chief control over Indian affairs for all English America. One of the most important items of business to which it was necessary for him to attend on this visit was the holding of a conference with the Indians at Albany.

The plan which Andros, under orders from the king, lawyers, and officials in England, was trying to execute was the complete consolidation of the colonies in this dominion under one all-embracing executive power. Had the plan succeeded, the tendencies originating in private enterprise, to which the colonies chiefly owed their origin, would have been crushed out and superseded. States rights would have been smothered in the cradle. Large vice-royalties, with much of the uniformity and autocratic rule which characterized French and Spanish colonization, would have taken their place. Commercial regulations would have been more strictly enforced. A uniform, and perhaps a more efficient, policy of defence would have been substituted for the crude and spasmodic efforts of localities or groups of colonies. The system would have been legal, for it rested upon the express will of the king.[1] But it would have done violence to the natural instincts both of Englishmen and of the colonists. While the inhabitants of New York and New Jersey might have quietly submitted to it, in the long run it could have been maintained in New England only by military force. It is also true that the Dutch and English of New York were averse to union with New Englanders. There was no vital sympathy between the two sections. Only a long process of intercourse and growth could break

[1] See the argument of Gershom Bulkeley, in his "Will and Doom," Colls. of Conn. Hist. Soc. III. He aims to prove that this was a more legal system than that which had preceded it in Connecticut, and especially more so than the government which followed under the revived charter. But he ignores the element of legality which had its origin in the earlier history of Connecticut, especially that which had passed since the issue of the charter of 1662.

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down the barriers of ignorance and prejudice which then separated them. The autocratic spirit and methods of Andros and James II could not really solve such a problem as that. At best only an artificial and forced union would have resulted from their efforts, and when the pressure was removed, the colonies would spontaneously return to their former relations.

And in fact only the first formal steps toward the union of the colonies had been taken, when Andros was called back to Boston by reports that the Indians were becoming restive along the northeastern frontier. In the course of the previous April (1688) he had visited that region and had taken possession of the trading house of Saint Castin, which was situated west of Penobscot bay. He had also taken steps to restore the estates of the English settlers which Palmer and West had attempted to seize the year before. Orders he also left for the repair of the fort at Pemaquid. The restiveness of the Abenaki Indians was now encouraged both by the intrigues of Saint Castin and by the influence of the two Jesuits, Jacques and Vincent Bigot, and when the winter of 1688–1689 set in the English found themselves on the threshold of another Indian war. Andros, in spite of his efforts at first to check the rumors and maintain the peace by proclamation, was forced at last to make a winter expedition to the scene of disturbance along the Maine coast. A considerable body of troops, including a part of the regulars, was taken with him. Long winter marches were made through the forests, but the enemy, who as yet had committed no outrages of consequence, fled into the recesses and avoided conflict. Some of their villages and stores of provisions were destroyed.[1] Andros remained in the region till early in the spring of 1689, superintending the building of a number of small forts. When he returned to Boston, garrisons were left at various points and all reasonable care was taken for the defence of the country.

For our immediate purpose the chief significance of this episode appears in the rumors affecting the good faith of

[1] See the report of Andros, N. Y. Col. Docs. III. 723.

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Andros, to which the activity of the Indians gave rise. So intense had feelings of opposition to him and his government become in Massachusetts, that the most false and malignant reports concerning his doings found ready acceptance. It was said, and many depositions on the subject were then or later[1] taken, that the governor had furnished Indians in several localities with arms and ammunition and had encouraged them to attack the English. The statement in various forms was made that he was a papist and was already in league with the French. In this connection it was reported that he had sent for a French squadron and it was on its way to Boston.[2] In this way many were encouraged to believe that, if the Andros government was permitted longer to exist, New England would be betrayed to the French and the savages would be let loose upon the settlements if they dared to resist.

It is needless to say that these rumors were entirely false and that the conduct of Andros gave no justification for them. And yet they arose naturally out of the uncertainty of the times, both in England and in the colonies, a condition which made Protestants fear that their faith might be in danger. The presence of the Indians was an ever threatening peril, the magnitude of which would be greatly increased if their attacks should be supported by the French. Thus the forces which were largely to determine the course of English and American history for the next seventy years were gathering. We shall see how they affected colonies outside New England, as well as those within that section. They certainly meant serious danger to a system of government which had attacked established traditions so vigorously as Andros and his supporters had done. Though his policy in no way directly imperilled Protestantism, the religious feelings, along with other motives, might easily be appealed to as furnishing the most effective stimulus to revolt. Andros, however, affected to put the charges aside

[1] See The Revolution in New England Justified, Andros Tracts, I. 101 *et seq.* See also Mather's Vindication of New England, *ibid.* II. 50. Randolph stated the truth in reply, New England's Faction Discovered, *ibid.* 207.

[2] Andros Tracts, I. 119.

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with a contemptuous denial, and when Thomas Browne and John Goodnow[1] of Sudbury brought an Indian to him with the purpose of having his slanderous statements about the governor disproved, they were rudely treated and afterwards put under heavy bonds to keep the peace. This incident, which, in the popular mind, went to confirm the rumors, was closed at the beginning of April, a month which was to witness the collapse, at its very centre, of that imposing structure, the Dominion of New England.

[1] Andros Tracts, I. 107–109.

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CHAPTER XIV

THE REVOLUTION IN NEW ENGLAND. THE PROVINCIAL CHARTER OF MASSACHUSETTS

THE earliest direct information which reached Sir Edmund Andros and his associates of the intended invasion of England by William of Orange was in all likelihood contained in the circular letter of October 16, 1688,[1] in which James II urged his subjects to lay aside all animosities and unite in the defence of himself and their country. The letter reached Andros at Pemaquid, on January 10, 1689, and in accordance with the express command of the king he embodied the substance of it in a proclamation, strengthened by his own command to all subjects and officials to be careful in their own stations and to be ready to repel any foreign invasion should such be attempted. This was duly published, and by means of it Andros gave further evidence, if such were needed, of his fidelity as an official, of the military spirit by which he was dominated.

In February or early in March news also reached the governor through New York that William had landed in England. His movements were probably hastened by this report, for he returned to Boston the middle or latter part of March.[2] In this case, as in most others during the colonial period, authoritative advices from England reached America earliest by way of the island colonies. In February, 1689, copies of the declaration issued by the Prince of Orange on his landing in England reached the island of Nevis, and one or more of them came into the hands of a young resident of Boston, named John Winslow. He brought the paper to Boston, arriving there at the beginning of April.[3] He did not carry a copy of it at once to the governor, but went to his own home. In view of the state of feeling which

[1] Reprinted in Andros Tracts, I. 75, from Historical Magazine, X. 145.

[2] N. Y. Col. Docs. III. 581, 723; Andros Tracts I, 88; Toppan, IV. 277; Palfrey, III. 570.

[3] Andros Tracts, I. 77, 78.

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then existed in Massachusetts — with which young Winslow doubtless sympathized — Andros, when he learned what he had brought, naturally suspected that it would be used against the government. He therefore sent the sheriff to Winslow, who, without arresting him, brought him to the governor. When asked why he had not come and told the governor the news, Winslow excused himself on the ground that the captain of the vessel in which he came had already done so. Andros then asked him where the declarations were which he had brought. Winslow refused to tell, for the reason, as he stated, that the government would withhold from the people the news which they contained. Andros therefore told him that he was a saucy fellow, and bade the sheriff take him to the justices, by whom he was committed to prison. He, however, is said to have been discharged the next morning.[1]

Though the information brought by the vessel from Nevis could not have been of sufficiently recent date to indicate decisively what success was to attend the expedition of the prince, it doubtless greatly stimulated rumor and the spirit of conspiracy and revolt. The clergy and former magistrates of Massachusetts, together with the body of church members and their sympathizers, heartily feared and hated the policy of which Andros and his group of officials were the exponents. Even in the council there were men who quietly shared in this feeling. The genuine New Englander always regarded the dissolution of the Massachusetts company as illegal and the entire régime which took the place of the company as unconstitutional. These events, though perfectly legal, were certainly in violent conflict with the past experience and the future aspirations of the people of New England. It is not probable that any course of conduct on the part of the governor or his subordinates would have reconciled the leaders and church members to the permanent continuance of this régime. New Englanders had always been accustomed, in a peculiarly intense and effective way, to manage their own affairs. Their spirit was the very opposite of that which submits quietly to autocratic rule, pays taxes which are

[1] See New England's Faction Discovered, attributed to Randolph, Andros Tracts, II. 209; Toppan, V. 57.

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imposed solely by the will of the executive, and obeys the commands of some remote power. Their ideal was the restoration of the old charter, and an outbreak having this as its purpose would probably have occurred, even had James II quietly retained the English throne. The cause of Andros and that of James are often considered to have been identical, and they were often so regarded by contemporaries. But in reality Andros had points of disagreement with James, as did the people of Massachusetts. Andros was loyal to the autocracy of James, but he was at heart opposed to his religious policy. The people of Massachusetts had fervently welcomed the declaration of indulgence, but they loathed autocratic government. Andros was to them the representative, not only of autocracy, but also of rigid Anglicanism. It is therefore conceivable that they might have conspired for his overthrow, while in general they remained faithful to the Stuart government in England. That in fact is what they were preparing to do in the early spring of 1689, before they knew what would be the issue of the crisis in England. On the other hand, had Andros been able to maintain himself in New England and James II in England until the latter felt that the time was ripe, with the aid of the French army and navy, to force Catholicism upon both England and the dominions, it is conceivable that Andros and the New Englanders would have been found in united opposition to the Stuart king. Their common Protestantism might have bound them together in this cause, as it did the Nonconformists and the Anglicans in England, and in the struggle it is quite likely that Andros would have become a defender of limited constitutional government.

But, as usual, the initiative was now taken by the people of eastern Massachusetts and their leaders. The object of their projected uprising was the overthrow of the Andros government and the undoing of the work of the hated Randolph, the arch-enemy of New England Puritanism.[1] On

[1] In the pages of Cotton Mather's Parentator, or Life of his father, Increase Mather, are embalmed many of the epithets which doubtless, at the time, were applied to Randolph and his associates, culminating in the term "blasted wretch."

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April 16 Andros wrote to Anthony Brockholls, "There's a general buzzing among the people, great with expectation of their old charter, or they know not what;" and he expressed the hope that all magistrates would be careful in the performance of their duties and that the soldiers would be kept prepared for any emergency.[1] He himself took up his residence in the fort. Two days later, on the date of the mid-week lecture in the First Church in Boston, occurred the outbreak,[2] for which preparation had doubtless been making for some weeks before. Early in the morning the streets at both ends of the town were seen to be filled with boys and men, armed some with firearms and others with clubs and hurrying as if to some rendezvous. Captain George of the frigate happened to be found on shore, and he was seized and detained as a prisoner in a house at the North end. The rioters now beat drums through the town and set up an ensign at the beacon as a warning to the surrounding country. In quick succession Bullivant, Randolph, Foxcroft, and other leaders among the official clique were seized by small bands of insurgents and hurried to jail or places of detention. A few of the officials took refuge with Andros in the fort and so escaped immediate arrest. Dudley was at the time holding court on Long Island and was not arrested till some days later, when, on his return, he was found at the house of Major Smith in the Narragansett country. The feeling of contempt with which Dudley and Randolph were commonly regarded was

[1] Hutchinson, Hist. of Mass. I. 332. A specially important statement concerning the origin of the uprising is made by Samuel Mather in his Life of Cotton Mather, 42. This is quoted in Andros Tracts, III. 145. See also the statement of Captain George, Colonial Papers, 1689–1692, 66.

[2] The three most reliable authorities for the events of April 18 and 19 are Byfield's Account of the Late Revolution in New England, Andros Tracts, I.; an anonymous letter written to Governor Hinckley, of Plymouth, and printed by Hutchinson in his History, I. 333. See also Account of the Late Revolution in New England, by A. B., first printed in Andros Tracts, II. 191. The various references of Randolph to the events are in his letters, Toppan, IV. and V. Andros's own account is in his Report to the Committee of Trade, N. Y. Col. Docs. III. 722. The account by Riggs, his servant, is in Colonial Papers, 1689–1692, 92. This is also printed by Palfrey, III. 585. There is another brief account in a letter from Bristol in New England to Mr. Mather and others. See Colonial Papers, 1689–1692, 33.

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expressed by their lodgment in the common jail. The other prisoners were spared that indignity.

While, on the 18th, the persons of the councillors and other officials were being seized, a militia company escorted Bradstreet, Danforth, and a number of the old magistrates to the council house on King Street. From a balcony at its eastern end about noon was read to the assembled people the "Declaration of the Gentlemen, Merchants, and Inhabitants of Boston and the counties adjacent."[1] In this vigorous manifesto the chief features of the recent misgovernment were reviewed and denounced, and the supposed connection of the episode with an all-embracing popish plot, including an alliance with the French, was affirmed. After completing their powerful but extremely partisan indictment of the Andros government, the authors of the "Declaration" drew the practical conclusion, "We do therefore seize upon the Persons of those few ill men who have been (next to our Sins) the grand Authors of our Miseries; resolving to secure them for what Justice Orders from his Highness, with the English Parliament, shall direct, lest, ere we are aware, we find . . . ourselves to be by them given away to a Forreign Power, before such Orders can reach unto us; for which Orders we now humbly wait." A chief share in the composition of this paper has with reason been attributed to Cotton Mather; though the degree to which in power and dignity it exceeds his customary style indicates that he had the assistance of other hands. Its style also clearly indicates that it was not hastily prepared, and hence the document itself becomes a weighty evidence in favor of the supposition that the uprising was the execution of a program which had been planned days or weeks before.

On this occasion, as on so many others in the history of the colonies, the weakness of an executive which has no support in popular favor was vividly illustrated. It did not receive even so clear an illustration in England in 1642 or 1688. At a single stroke Andros was deprived of his councillors, and, from his retreat in the fort, found his only reliance to be in a handful of soldiers and a single small

[1] Andros Tracts, I. 11. So many of those who were in attendance were armed, that the author of the Account calls them "the army."

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frigate. Curiously he first appealed to the Boston ministers, who, the Thursday lecture having been suspended, were zealously supporting the insurrection, either at the town house or elsewhere. But to the governor's appeal for a conference with them they returned a negative answer. By this time it was long past midday. The town was thoroughly aroused. Hundreds of armed militiamen had come in from the surrounding country, and hundreds more were ready to cross from Charlestown. The leaders at the town house, having this force at their command, sent a message to the governor,[1] warning him, for his own safety and the quiet of the colony, to surrender himself and the government, to be disposed of according to direction shortly expected from the crown of England.

For a brief period it seemed as if Andros might be rescued by the marines from the frigate, which was now under the command of the lieutenant. It put out its flags, opened its ports, and made ready for action, the lieutenant, in spite of a caution from the imprisoned captain, declaring that he would die rather than that the vessel should be taken. John Nelson, at the head of the militiamen, now started for the fort to present the summons to the governor. Just then a boat was sent from the frigate for the governor, but this was seized by the insurgents and the governor's way of escape cut off. Nelson's men quietly surrounded the fort on two sides, their superiority of numbers being so great as to make resistance on the part of the weak garrison impossible. When the summons was first sent in to Andros, he refused to surrender until he had sent West, the deputy secretary who still remained with him, to the town house to consult with the leaders there. His appeal to them proved unsuccessful, and on West's return the governor and those who still remained at his side "came forth from the fort and went disarmed to the town house, and from thence some to the close jail, and the governor under a guard to Mr. Usher's house." Randolph, it is said, was called upon to perform the ceremony, under the order of

[1] Andros Tracts, I. 20.

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Andros, of the surrender of the fort. Thus ended the work of the first day of the revolt.

On the second day the insurgents directed their efforts against the frigate and the castle in the harbor. At first Andros refused to surrender the castle, but when he was told that if he did not yield to this demand he would be exposed to the rage of the people, he gave way. The surrender was then made to a body of colonial militia and the garrison of royal troops was brought away. On the return of the men from the castle, all the ordnance in the fort and on shipboard was directed upon the frigate and Captain George was told that he must surrender her or she would be destroyed. He at first protested, alleging that if he surrendered the crew would lose their wages, and declaring that "that devil Randolph," with whom he had long been on bad terms, was responsible for all the trouble. He was therefore permitted to go on board, strike the topmast and bring the sails on shore, which he did. The frigate, thus dismantled, was no longer dangerous and the formality of a surrender was avoided. Toward night, at the demand of the country people, Andros was removed to the fort, where he was placed as a prisoner under the charge of Nelson. Several of the most offensive councillors — Graham, Palmer, and West from New York — were imprisoned in the castle. At later dates Andros made two efforts to escape, hoping to reach New York and thence procure conveyance to England; but in both instances he was unsuccessful, and after his second recapture he too was lodged in the castle.[1]

The third day of the uprising was devoted to the equally important work of providing a temporary government. In recent English history, to say nothing of New England itself, there were precedents which could be easily utilized for the purpose. The leaders who had been in counsel at the town house and who had addressed the summons to Andros called to their assistance twenty-two others, and these all associated themselves under the name of a "Council for the Safety

[1] Randolph wrote about alleged hard usage to which the ex-governor was subjected while there.

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and the Conservation of the Peace." Bradstreet was chosen president of this body and Wait Winthrop was put in command of the militia. An order was at once issued for the recall of a part of the forces from the frontier and by this step an opportunity was found to remove more obnoxious officials.

The real object of the moving spirits in the revolt had been to clear the ground for the reëstablishment of government under the old charter. The sentiment throughout Massachusetts was strongly favorable to such a step. But Bradstreet was hesitating in disposition and far advanced in years. The council, moreover, did not feel justified in taking this step without a mandate from the people of the colony. Therefore they summoned a convention,[1] to meet on May 9, and to consist of two delegates from each town, with two additional from Boston. This body at once interpreted the will of the people to be that the government which had been ousted on the arrival of Dudley's commission in 1686 should be reinstated. But its members did not bring with them definite instructions from the freemen to that effect. Therefore, as the magistrates were unwilling to act without this, the council of safety continued to act till the expression of the will of the towns could be sought anew.

On May 22 the convention reassembled, with delegates from fifty-four towns.[2] Of these all but fourteen had instructed their delegates in favor of the resumption of the charter. The majority of the council, however, still appeared to be opposed to the step. But after a debate of two days the opinion of the delegates prevailed, and the magistrates who had been chosen at the last election under the old charter were again intrusted with the charge of the government. Those whom they had recently associated with themselves in the council of safety, at the instance of the delegates were compelled to retire from office. Almost immediately an order arrived from England for the proclamation of William and Mary, which was obeyed with the greatest public exhibitions of joy. More detailed information concerning events in

[1] Ms. Recs. of Mass. VI.; Palfrey, III. 588 *et seq.*

[2] See documents in Mather Papers, 4 Colls. Mass. Hist. Soc. VIII. 708.

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England was brought by Sir William Phips, who arrived while the celebration was in progress. A new house of deputies for the general court was elected, and the entire body met for business on June 6. Two loyal addresses had already been sent to the king[1] in which a claim to share in the expected general restoration of charters was expressed. At the suggestion of the council the deputies presented articles of impeachment against Andros, Dudley, Randolph, Palmer, West, Graham, Farwell, and Sherlock. The admission of the accused to bail, though applied for, was refused. Thus affairs stood until, as the result of petitions from the accused to the home government, a command came under the order in council of July 25, that they all should be sent for trial to England.[2] The other New England colonies immediately followed the example of Massachusetts, so far as their respective conditions necessitated. Before the middle of May the legislatures of Plymouth, Rhode Island, and Connecticut, by spontaneous act of their former leaders, had been again called into existence under the old[3] forms. It was held that, as no decree had been issued against the charters of Rhode Island and Connecticut, their authority would revive as soon as the former government had been removed. Plymouth had no charter to either facilitate or hinder her course. The former executive officers, so far as they were willing to act, were therefore recalled and were confirmed in their places by new elections. In scarcely an instance among these colonies was it necessary to arrest any of Andros's councillors or put them under bonds. The New York and British contingent in that body, who were such objects of distrust, were all caught by the uprising in Massachusetts and found their lodgment in her prisons. Thus quietly and promptly did affairs begin again to move in the old grooves. By all the colonies the king and queen were proclaimed and loyal addresses were sent. But the order that Andros and his fellow officials should be sent to Eng-

[1] Colonial Papers, 1689–1692, 42, 61.

[2] *Ibid.* 105, 111; 4 Colls. Mass. Hist. Soc. VIII. 711.

[3] See Gershom Bulkeley's discussion of this in his Will and Doom, Colls. of Conn. Hist. Soc. III.

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land on the first ship and be well treated during the voyage insured a renewal of inquiries by the home government into New England conditions. This necessitates a return to somewhat earlier events, in order that we may trace the activity of Increase Mather as agent in England.

At not a few important crises had agents already been sent to London, not only from New England, but from the other colonies as well. Personalities of note had on several occasions been selected to fill these positions. The record of the appointment and work of agents has appeared in these pages, and when reviewed, it will show that the colonial agency had become an important institution. At times it had been found necessary to appoint them, and their services in negotiations with the home government had been found indispensable. To the colony which sent them their services were similar to those performed for the British government by royal commissioners. They brought the views of the colonists more directly to bear upon the king and the crown officials than otherwise would have been possible, while they procured more authentic and detailed information than could be obtained by correspondence. The time had not yet come when provision was regularly made by the colonies for resident agents, but events were tending that way. The creation of royal provinces was destined to promote such a result, while as colonial interests became more important the home government began to insist on a permanent provision of this sort. Edward Winslow, Roger Williams, John Clark, and the younger Winthrop had already performed distinguished service as agents of New England colonies, while the long controversy between Massachusetts and the crown had occasioned the appointment of a succession of agencies. In the provinces governors, and often proprietors themselves, had acted in this capacity. Berkeley and Moryson, to say nothing of earlier figures in Virginia history, had already marked out the function of agents in a royal province. The proprietors who were resident in Great Britain served necessarily as agents for their provinces, while Penn and Charles Calvert made long visits to England for this express purpose.

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Among those who acted as colonial agents in the seventeenth century Increase Mather holds a unique and prominent place. It is true that he was not the only clergyman who served in this capacity, but Roger Williams and John Clark possessed more of the lay, than of the distinctively clerical, spirit. Other clergymen who were drafted into this service were either totally unable to figure in a court or were not intrusted with duties which called for the exercise of high powers. Increase Mather was counted among the orthodox of his time as the leader, not only in the pulpit of New England, but in the administration of church affairs and the care of the interests of the college. His father and his son labored faithfully in the same calling, but they failed to reach the peculiar distinction to which he attained. Like men of his class in the earlier generation, he also shared in the political conflicts of his time. He was a learned man, with the gift of abundant and forcible speech and an impressive bearing. He was also ready with the pen, and showed decided talent as a pamphleteer. A prolonged residence abroad in early life had given him an acquaintance with the world beyond what was common among his class. This all gave him a certain fitness for the duties of agent at this crisis of Massachusetts history, while his zeal as an opponent of Randolph and Andros made him willing to undertake the task.

When, in the spring of 1688, the issue of writs of intrusion seemed to have brought the autocratic rule of Andros to the point where it was no longer endurable, by general consent of the leaders who were watching for a way of relief it was agreed that Mather should go to England. None of this class were in office. There was no general court. As in the case of Weare, who went to England in the hope of ridding New Hampshire of the presence of Cranfield, it was impossible to furnish Mather with the credentials usually given to agents. But, none the less, he went as "confessedly the representative of the hopes and wants of the greater portion of the citizens of Massachusetts." He did not attempt unduly to conceal the fact of his going, though at the very last, in order to avoid the service of a writ in a suit for

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defamation which Randolph had brought against him, he escaped in disguise on board a ship which was just sailing for England.[1]

Near the close[2] of May Mather arrived in London. Shortly thereafter occurred the birth of the prince — the heir of James II — and the trial and acquittal of the seven bishops. He found himself in the midst of the agitation which was occasioned by the determined efforts of the king to enforce the second declaration of indulgence. An appeal from a Nonconformist was therefore not altogether unwelcome to James, though it was directed against his favorite plan of colonial government. Almost immediately Mather twice gained access to the person of the king and met what seemed to be a favorable reception. In response to the thanks which the agent expressed for the declaration of indulgence James said that he hoped to obtain from parliament a "Magna Charta for Liberty of Conscience." At the second audience, which was in the royal closet, Mather began his complaints against Andros, and the interview closed with a request from the king that the agent would submit his charges in writing. This led to the preparation of two statements of grievances, and a petition for relief signed by Mather, Nowell, and Hutchinson.[3] These, with other documents, Mather presented on July 2. The king put the papers into his pocket with the statement that "he would take care about it."

Meantime Mather had procured the assistance of Sir Henry Ashurst, a wealthy Nonconformist and member of parliament, who now began a career as agent for Massachusetts

[1] For materials relating to the alleged forged letter of Mather and the suit for defamation, see Palfrey, III. 556; 4 Colls. Mass. Hist. Soc. VIII. 100–110, 702.

[2] See Cotton Mather's Parentator. The part of this which contains the history of the agency is reprinted with valuable notes in Andros Tracts, III. Vol. II. also contains the pamphlets published by Mather in connection with his work as agent, and other illustrative material. See also letters and documents in 4 Colls. Mass. Hist. Soc. VIII. 113, 697; and in Colonial Papers, 1689–1692.

[3] Nowell and Hutchinson were two Massachusetts men of some prominence whom Mather had found in London. See Andros Tracts, II. 148; 4 Colls. Mass. Hist. Soc. VIII. 699, 702.

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which was to last for several years. Mather also recommended himself favorably not only to William Penn, but to the Earl of Sunderland, the Earl of Melfort, Chief Justice Jeffries, and even to Father Petre. He began the issue of pamphlets in defence of New England and filled with severe criticism of the Andros régime. As the summer progressed Mather began to hope for the restoration of the charter, the confirmation of land titles, and an assembly. The Earl of Sunderland, however, expressly discountenanced the last named proposal. The agents of other colonies may also have joined with him in the effort to procure a restoration of their own charters. In September, and again in the middle of October, Mather was admitted to audiences with the king. On both occasions he received general assurances, but nothing more. Though on the last occasion there seemed some ground for hope, it speedily vanished. Difficulties were then thickening about the king which made it impossible for him to sanction reforms in the colonies, even if he had been so inclined. Mather at last realized that he was being put off with mere words and dropped his suit. James was soon overwhelmed by the Revolution, and when the case was taken up again it was with the Prince of Orange and a Protestant court.

Mather was of course closely identified with the Dissenters of England and their cause. This now confirmed his hold upon Ashurst and brought to his aid Philip Lord Wharton, who introduced him to the new king. Already, on January 9, 1689, more than a month before the coronation, Mather was introduced by Wharton to William and presented to him a petition.[1] He had never been able to bring the question of the restoration of the charter squarely before James. But, as the assault on the corporations had been denounced by William as one of the arbitrary measures of the Stuarts, the effects of which he proposed to remedy, Mather now made that the burden of his plea on behalf of New England. In his petition he affirmed that the charter had been ravished from them by judgment in the chancery without the accused

[1] Andros Tracts, I. 274; III. 146.

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being allowed to make the least defence, and that Andros had been sent over under an arbitrary and illegal commission, with power to raise money from the people without their consent. He therefore petitioned that the former charter of New England should be restored and the people there be again permitted to enjoy their ancient rights. The Prince replied that he would take the best care he could about it, but indicated his view of its comparative importance by referring Mather to an under-secretary named Jephson.

Fortunately Mather learned from Jephson that a circular letter was already prepared confirming the governors of all the colonies, New England included, in their places until further order. He at once remonstrated against this as likely to be ruinous to his cause. On its being brought to William's notice, he ordered the letter to New England to be stopped, and thus a direct collision between the leaders of the uprising at Boston and the authorities in England was avoided.

On February 16, three days after the coronation, a new committee of the privy council for trade and plantations was appointed. Among its members were the Earls of Danby, Halifax, Shrewsbury, Nottingham, Viscount Mordaunt, Bishop Compton of London, Sir Henry Capel, Mr. Powle, and Mr. Russell. No modification was made in the powers of the committee, but only a change in its personnel corresponding to the reorganization of the privy council and the ministry. Among the items of business which were first transacted by this body was that occasioned by a petition from Mather and Sir William Phips similar in contents to the one just referred to. As the king also ordered that the circular letter to New England should not be sent until a report could be made concerning the revocation of the charter, Mather and Phips were called before the committee, and with them Sir Robert Sawyer. The agents were apparently unable to convince the committee that there was a flaw in the *scire facias*, and they agreed to report to the king that a provisional commission should be sent to New England to take the place of Andros, with an instruction not to levy any money on the vote of the governor and

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council alone. An order in council was accordingly proposed, fixing the number of commissioners at two, and referring back to the committee the subject of the draft of a new charter for New England, the provisions of which should be agreeable to the rights of the colonies and to the laws of England. The language of the committee's report shows that their attitude toward the settlement of New England affairs was being determined by the necessity of defence against the French, a body of whom, they had learned, had already invaded the northern colonies.[1] The plan of continuing the dominion of New England, with its royal governor, was still cherished, and in fact was the only one which under the circumstances recommended itself to the English officials. It implied greater efficiency in all that pertained to colonial defence, and that to their minds was the dominant consideration.[2] But the privy council felt that the question of the right of the king to appoint a governor should be further considered, and therefore the whole matter was laid over.

Presently letters began to arrive from New England, and from these the government learned the details of the revolt, while charges and counter charges were made by the two parties to the dispute. Randolph wrote at length to the lords of trade, but his letter was more an argument than a narrative, its purpose being to show that the colonies had been united in order to their better protection against the French, that the peril from that quarter was steadily increasing, while the colonists were overthrowing their government in order that they might be free to harbor pirates and violate the acts of trade. He had heard of the solicitations of Mather and intended that this letter should serve as a brief against him. Captain George sent to Secretary Pepys of

[1] Colonial Papers, 1689–1692, pp. 6–8, 11; Andros Tracts, III. 147; Palfrey, IV. 61.

[2] See the report of the lords of trade of May 2. "We recommend the settlement of such a government in New England, New York and the Jerseys as upon the recall of Sir Edmund Andros, will enable the people not only to oppose the French with their united forces but to carry on other operations; otherwise the French may easily possess themselves of that dominion." Colonial Papers, 1689–1692, 34.

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the admiralty an account of the uprising, so far chiefly as it affected himself and the frigate. A general narrative of the affair was brought by John Riggs, who was closely connected with Andros, possibly as secretary. He had sailed from New York, and submitted with his narrative a copy of the declaration of April 18, of the summons to Andros to surrender, of the declaration of the convention on May 24, and the acceptance of the government by the former magistrates.[1] From the other side, and at equally early dates, came the addresses to the king and queen from the president and council of safety, and later an address from the governor, council, and convention.[2] The result of these communications was the issue, on July 25, of an order in council, directed to those who at present were administering the government in New England, to send Andros and his fellow prisoners to Europe by the first ship, and that they should be civilly treated on the passage.[3] The commissioners of the customs asked also that Randolph's books and papers, which had been taken from him, might be sealed up and forwarded to one of the secretaries of state, and that so many of them as concerned the public revenues should be lodged with the commissioners in England until another revenue officer could be appointed to reside in Boston.

As the years 1689 and 1690 progressed, the war on the continent and in the British Isles absorbed the attention of the king. Months passed before it was possible for the government to take seriously in hand the internal affairs of New England. The aspect indeed of its affairs which most interested the crown officials was the war on the northern frontier.

The restoration of the former conditions in New England, together with the outbreak under Leisler in New York, greatly complicated the problem of defence in comparison to what it would have been had the government of the dominion been in full and active sway. The troops, on the removal of their officers, deserted or were withdrawn

[1] Colonial Papers, *ibid.* 45, 66, 92.
[2] *Ibid.* 42.
[3] *Ibid.* 105, 111; Toppan, IV. 289–292; V. 25, 26.

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from the frontier posts in Maine, and the French and Indians in their early assaults found the settlements almost defenceless. In the despatch of expeditions the Massachusetts government was not especially prompt or efficient. A disposition even appeared to resist its orders. It was said that the first expedition of Phips would have been made more helpful if it had been sent to New Hampshire and Maine rather than to Port Royal. The failure and the cost of his expedition of the same year against Quebec were also emphasized. Indeed, the correspondents of the English officials — Bullivant, Rev. Samuel Myles, the Anglicans of Boston, Charlestown, Portsmouth, and other places, the frontiersmen of the eastern settlements — joined in a chorus of complaint and criticism.[1] The faults of the restored government were thrown into clearest relief, while that of Andros — with which they compared it — had not been subjected to the strain of war. Even the accounts sent by Bradstreet and his councillors were discouraging enough. It was necessary to increase the country rates, much as had been done in Philip's war, so that the taxes which Sir Edmund had imposed were almost forgotten in comparison. The general cry was for a settled government, for regulation and help from the king, so that the horrors of Indian massacre might be abated.

During the summer of 1689 Randolph, as usual, was pouring in letters to the lords of trade, the commissioners of the customs, the lord privy seal, the archbishop of Canterbury and the bishop of London, to Blathwayt and Povey, and to Francis Nicholson after the return of the latter from New York. He even prepared a statement for submission to parliament. His activity on this occasion was a repetition of the zeal which he had shown in connection with the recall of the Massachusetts charter. In strange contrast to it was the stolid silence of Andros. In his letters Randolph dwelt on the ravages of the Indians since the overthrow of the king's government and on the recall of the troops; on the

[1] Colonial Papers, 1689–1692, 111, 158, 163–164, 167, 212, 213, 220, 240–241, 263, 338, 376, 384–387, 409.

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assertion that the colonists now thought only of the defence of their own homes and would not undertake large offensive operations, in short on the inefficiency of the entire militia system. The weakness of the restored charter government — a fact which, because of its more than doubtful legality, was admitted even by Bradstreet and his assistants — came in for its share of attention. Its officials were charged — and this also was true enough — with sharing the anti-monarchical views of Vane and Peters, while Venner's name was introduced to give sharper point to the moral which Randolph sought to enforce. Violations of the acts of trade he naturally dwelt on at length, transmitting long lists of alleged cases which had arisen since the restraining hands of the king's officials had been removed, and even repeating the claim that it was to secure license in these matters that the revolt had been planned. In his letters to the churchmen Randolph dwelt on the withholding of their due liberties from Anglicans; on the ill treatment to which Mr. Ratcliff had been subjected, which had now compelled him to return to England; on the bitter attacks upon Anglican practices and beliefs which emanated from press and pulpit, and the public contempt with which the rites of the church had been visited.

Randolph was not slow to clear the fame of Andros from the slanders which had been published and to defend him against the charge of cruelty and undue oppression. Look, he said, not at words, but at acts; and the procedure in the courts, the form in which oaths were administered, the renewal of patents, would all be found to have been in accordance with well-established precedents. Mistakes might have been made, but the principle which was followed was correct. If the Ipswich men felt aggrieved, they had recourse to the courts. Just here, however, the weakness of Randolph's argument appears. No precedents to which he could appeal would be satisfactory to the New Englander. Randolph's precedents were borrowed from New York and from the island colonies, where direct and continuous control by the home government had been maintained. To these the New Englander had never been accustomed, and he desired above all to keep free from them. The degree of self govern-

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ment which he enjoyed had been so complete that officials appointed and instructed solely by the crown, even though they were Englishmen, seemed to him like foreigners. This feeling had its origin largely in his religious independency, and it had been confirmed by his entire experience as a colonist. Moreover, government in New England had rested on the general courts, and offices had been filled by means of a system of annual elections. It was by reference to this fact that Winthrop had sought to confirm his claim that government in Massachusetts was not arbitrary. But that feature had now almost entirely disappeared, and with it the assembly had also vanished. A revolution had indeed been wrought in New England government. The form which Andros had been sent to establish, though it was in harmony with many features of the British colonial system, and corresponded well with the official idea of what colonial government should be, was the almost direct antithesis of that which had grown up in New England; and, as New Englanders believed, it was equally opposed to the spirit of English institutions. In the case of Andros *versus* New England the colonial and the imperialist ideals had come into the most direct and violent conflict, more so than was possible in any of the provinces. Naturally, then, the arguments which were used by Randolph and Palmer in defence of the Andros régime seemed at best to be only palliations. They could not reconcile men to a policy which seemed to them wholly foreign and illegal.

The facts of the war, together with Randolph's representations and those of other kindred spirits, could not have remained without an influence upon the minds of officials in England. There they struck responsive chords, for they dwelt upon considerations which were of weight to the official mind. After allowing for the exaggeration which they contained, these letters and arguments confirmed the opinion that, at the beginning of a great war with France, it would not do to allow New England to lapse into its old state of independency. The northern frontier was now becoming an object of interest to the home government, of interest which in time was to rival the importance of the

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Gulf and the Caribbean sea. In view of these facts, the king and those who were supporting him in the conflict must be impressed with arguments like those which Randolph used. In many cases the same men who were in office under James were in office now. Their views, except in reference to the continuance of assemblies in the colonies, had not materially changed. Military considerations were now more emphasized than ever, and with them the importance of control over trade was enhanced. To these men Randolph made his appeals direct, as he had done in his attack upon the Massachusetts charter. He helped to force the issue then; we cannot dismiss his arguments in 1689 as if they had no effect. Mather's printed pamphlets were, in comparison, so many strokes in the air. They were not directed to those in whose hands lay the decision; they too contained many irrelevancies and exaggerations, while they failed to lay the necessary emphasis on the problem of defence. There was much in his defence of the old New England régime, or in any defence of it which could be made, that would not favorably impress William III and his privy councillors. The war, if nothing else, made it impossible for them to condemn Andros, or to consent to the restoration of the Massachusetts charter. As representations from the colony made the situation clearer, it became evident that the colonists themselves were not united in support of a restoration of the corporate system.[1]

Toward the close of 1689 Mather resolved to ask the parliament to reverse the decree in chancery against the charter. If that were done, he proposed to petition the king for a modification of the clauses of the charter in such a way as would better adapt it to the needs of the present. The bill for the restoration of the charters both in the realm and in New England passed the Commons, and there seemed reason to expect that it would pass the Lords. But the parliament was prorogued near the close of January, 1690, and was ultimately dissolved before action was taken in the upper house. With this disappeared all hope of bringing the

[1] Colonial Papers, 1689–1692, 212, 213.

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question to a settlement through the interposition of parliament.

In March Andros and his fellow officials who had been summoned from Boston arrived, and at about the same time came Elisha Cooke and Thomas Oakes, who had been appointed by the general court of Massachusetts to act with Mather and Ashurst as agents.[1] Among other things they were instructed to procure a restoration of the charter. A hearing before the committee of trade was now arranged, and after some delay three charges were submitted against Andros, Dudley, and the rest.[2] They were to the effect that Andros had attempted to conceal the news of the intended landing of the Prince of Orange and had required persons to oppose the same; that he had illegally and oppressively levied taxes, had denied that the colonists had property in their lands without patents from him, and had encouraged the Indians to make war upon the English; and that all the others who, with Andros, were the objects of these charges had been confederates with him in the effort to oppress the people of New England. To these Andros submitted replies to the effect that in all respects he had acted in accordance with his commission, which to him and his superiors was certainly the standard of legality. If left to themselves, the agents would have sought a thorough inquiry into the doings of Andros and his associates, but that would have raised some awkward questions for the government and for individual members of the council. If any party, moreover, had been guilty of illegal conduct, it was the English government itself, and not the officials whom it had commissioned to administer New England affairs. For this reason, on the advice of Sir John Somers, the agents refrained from signing the charges and they were not even read to their lordships. At the hearing, the fact was brought out that the uprising, as in England, had been the spontaneous act of the country and that the two events must be justified on the same

[1] The order for their appointment, with their instructions, are in Andros Tracts, III. 58, 59.

[2] *Ibid.* I. 73; II. 173–188; Colonial Papers, 1689–1692, 246, 251, 252.

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ground; criticism of the colonists would seem like reflections on the leaders of the revolt in England. An order in council was at once issued for the release of Andros and his associates, and steps were soon taken for their continuance in the colonial service. Andros presented a formal defence of his conduct to the committee of trade, while Randolph and others continued through the summer the issue of attacks on Massachusetts and defences of the policy of Andros.[1] From America reports kept coming in of the disasters suffered by the English on the frontier and of the only partially successful efforts of Sir William Phips against the French.

As the disposition of the new parliament, owing to an accession of Tory strength, proved unfavorable, the agents made some moves toward obtaining a writ of error for calling the case relating to the charter from the Chancery before King's Bench; but this effort naturally proved to be vain. Their hopes of securing a restoration of the old charter were then seen to be at an end. Their only reliance must now be placed on an application to the king for a new charter, though in this they must exceed the letter of their instructions. But the communication[2] from Bradstreet showed that the colonists were already becoming anxious to see some results.

The three agents brought the matter first to the king's attention through a petition, which by him was referred to the two chief justices and to the law officers of the crown. The heads of the old charter and of the one which had been granted to Sir Ferdinando Gorges, as well as the privileges which were now prayed for, were submitted. Several meetings were held, which the agents were permitted to attend. The proposals were then laid before the king by Chief Justice Holt, and at his command were reported to the privy

[1] It was probably at this time that the pamphlet entitled "New England' Faction Discovered" was published. This is now generally attributed to Randolph. Mather called it a "scandalous Pamphlet," but Whitmore, the editor, thought it "the ablest vindication of the Andros government in print." Andros Tracts, II. 205; Toppan, V. 52; Palfrey, IV. 69 n. See Colonial Papers, *ibid.* 284, 287.

[2] Andros Tracts, III. 52.

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council and by it referred to the lords of trade.[1] The king then departed on a winter visit to Holland. No decisive action could be taken till his return. But in the meantime Mather in particular strove to arouse interest among such privy councillors as he could reach, and obtained an interview with the queen.[2] On the king's brief return in the spring Mather was granted two audiences, but found his Majesty non-committal. He could only say that, when the lords of trade should report, he would see what could be done. But the lords of trade already had before them an address to the king from sixty-two discontented[3] inhabitants of Charlestown, Boston, and other adjacent places, in which, because of the disasters from which New England was suffering as the result of being again split up into so many small colonies, they asked to be taken under royal protection. The agents were at once called upon to give a statement in writing of the condition of the colony, and Sir William Phips and others were summoned to attend. Phips attended and gave an account of his expedition against Quebec, while the agents criticised sharply the statements in the hostile address as well as the character and standing of its authors. They denied that the colonies had been remiss in defence and declared that not a fourth part of the desolation had been wrought which was suffered in Philip's war; so far as the colonists might have been blameworthy, they attributed it to the discouragement consequent on the despotism of Andros.

The lords of trade now submitted[4] to the king the questions, whether he would prefer an appointed or an elected governor in New England, and whether or not the governor should have the right of veto. This implied that the assembly was to be restored. Upon receiving a statement from the chief justice that, as the Massachusetts charter stood vacated by a judgment against it, the king might put them under such a government as he saw fit, William replied that he believed it would be for the welfare of all concerned

[1] Andros Tracts, II. 276; III. 155; Colonial Papers, 1689–1692, 375.
[2] Andros Tracts, III. 158. [3] Colonial Papers, *ibid.* 409, 411, 415–417.
[4] *Ibid.* 417, 420; Andros Tracts, II. 279 *et seq.*

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if he himself should have the appointment of the governor. But he would have the agents nominate a man who would be agreeable to the temper of the people there, though at the present crisis it must be a military man. The king thereupon departed for his first campaign on the continent, and an order in council was drawn that the government of Massachusetts should be settled after the model of that of Barbadoes, with a governor of the king's appointment and with the full negative voice. Mather, however, was not willing to accept this as a correct statement of the intentions of the king; by soliciting certain members of the council he procured the despatch of a copy of the order to Lord Sidney, then secretary of state and with the king in Flanders, with the request that the king should be asked if it agreed with his purpose. No reply ever came.

During May Attorney General Treby prepared a draft of the proposed charter, which, on June 8, was submitted to the lords of trade.[1] This contained a provision for the election of the deputy governor and other officers by the freemen. For this reason it was unsatisfactory to the lords, and was referred back to the attorney general for the preparation of heads for a new draft. These,[2] when submitted, were agreed to and provided that both governor and deputy governor should be appointed by the king, that the assistants or council be chosen by the general court, that the governor with the advice of the council should appoint the judges, sheriffs, and justices of the peace; that the word "freeman" should be everywhere changed to freeholder. The agents, however, had already submitted proposals,[3] among which were clauses calling for the election of the deputy governor by the council, for the election of the council by the freeholders and freemen without the governor's veto; that the assembly should have authority to erect courts and choose judges, justices of the peace, and sheriffs, also without the governor's veto; that the probating of wills should not be among the powers of the governor and council, and that the

[1] Colonial Papers, *ibid.* 423, 436, 470; Palfrey, IV. 73.
[2] Colonial Papers, *ibid.* 479. [3] *Ibid.* 470.

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veto of the governor should extend to laws only and not to elections and other acts. Upon these points Mather in particular had set his heart, and when he saw how far the resolutions, as passed by the committee, departed from them, he and Ashurst visited the attorney general. Mather declared, as he afterwards confessed, perhaps "with a greater pathos" than he should have done, that he would sooner part with life than consent to the resolutions and to the infringement of the liberties of the colony which they implied. When he reported this to some of the ministers, he was coolly reminded that the consent of the agents was not expected or desired, for they did not think them plenipotentiaries from a sovereign state. If they would not submit to the king's pleasure, he was resolved to settle the country, and they must take what would follow.[1]

On July 9 further heads for the charter were agreed to[2] which conceded the point that the assembly should erect courts, but gave the probate of wills to the governor and council. They also extended the veto power of the governor to all acts of the assembly, and confirmed him in the right of appointing judges, sheriffs and justices. Mather and Ashurst protested that these provisions were not consistent with the promise that the chartered privileges of Massachusetts should be restored. They also cherished the hope that, if the king were in England and could be personally appealed to, a modification of the terms could be secured. The protests of the agents were sent over to him in Flanders, and an effort was made to secure delay until his return. But it was in vain. The king declared that he approved of the minutes as agreed to by the lords of trade, and did by no means approve of the objections which the agents made against them.

This reply from the king was decisive, and the agents now devoted their energies to the continuance of the union of Maine and Plymouth with Massachusetts and to the annexation of Nova Scotia. In these efforts they were successful. But they were unable to counteract the appeals of Samuel Allen and his supporters, the possessors of the Mason claims,

[1] Andros Tracts, II. 281. [2] Colonial Papers, *ibid.* 502.

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for the establishment of a distinct government in New Hampshire. A clause was also added legalizing the judicial oath according to the form in which it was customarily administered in New England,[1] and another clause confirming land grants already made by the general court. On September 17 the order of the queen in council was issued that the charter should pass the great seal.

The charter of 1691 may be considered from several points of view. Massachusetts, as defined by its terms, included much more than was bestowed in 1629 on Sir Henry Roswell and his associates. The incorporation of Maine gave the stamp of finality to the ursurpation of 1652–1653, it having in the meantime been confirmed by purchase and in a way recognized by three royal commissions to Dudley and Andros. The union of Plymouth with the bay colony was a natural consummation, helped on by the crown in its commissions to Dudley and Andros and now made permanent. The artificial connection between New York and the territory east of the Kennebec river was now severed, and Massachusetts became responsible for the security of Pemaquid and the other outposts in that region. Phips had visited England during the winter of 1690 in order to report upon his achievements at Port Royal and Quebec; his appointment as governor and the establishment of a loose connection between Nova Scotia and Massachusetts were consequences of these events. Had the province included New Hampshire, it would have insured the permanence of a goodly share of the dominion of New England and would have served the purposes of defence nearly as well as that was intended to do. But even as it was, with the appointment of the king's representative at Boston as governor of New Hampshire, the practical effectiveness of the former dominion was conserved to a reasonable extent. And yet the governor of Massachusetts could not march its troops out of the province without their own consent or the consent of the general court; his discretion in that regard was less than that usually given to royal governors.

[1] Colonial Papers, *ibid.* 525, 531, 542–545; Andros Tracts, II. 284.

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The charter of 1691 also conveyed a much broader and more complete grant of powers than did the charter of 1629. It was such a charter as Virginia would have welcomed before Bacon's rebellion. By it an express legal basis was first given to the legislature and the judiciary in Massachusetts. The right of the one to tax and of the other to issue judgments in civil and criminal cases was now fully recognized. To the general court also was given the right to erect all judicial tribunals. The former assistants now became the council and the upper house of the legislature, and were elected by the general court, subject to the governor's veto. The old religious qualification for the suffrage was entirely abolished, and in its place appeared the requirement which was characteristic of England and the other colonies — the possession of property, real or personal. Thus the death blow was given to New England theocracy, for political privilege was henceforth to depend on wealth and not on church membership. As large a proportion of the inhabitants may have been excluded from the suffrage under the later conditions as under the former, but none could now reasonably question the authority of the colony to tax them, though such a course was possible for the non-freeman under the former charter.

But notwithstanding its superior written guaranties, the general court was no longer absolute, as it had been under the first charter. Its power was now limited by the veto of a governor, of one who was no longer an elected chairman, but an appointee of the king, commissioned and instructed as were other royal governors. In the case of his absence the same was true of the deputy governor; and by the side of the chief executive stood the royally appointed secretary. The veto power extended to all acts of the general court, applying thus to elections of councillors as well as to acts of legislation. The laws were also subject to royal examination and disallowance, and to that end must be sent to England, as was required by the instructions which were issued for all other royal provinces. In like fashion was the obligation of appeals to the king in council enforced, while the general obligations of the governor as an executive agent were pre-

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scribed in the commission and instructions. Without the governor's warrant no money could be issued from the treasury. Judges, sheriffs, and justices of the peace were to be appointed by the governor with the advice and consent of the council. Grants of land might be freely made by the governor and general court, and no reference to quit rents appears in the charter. Freedom of religion to all except papists was also guarantied. The supremacy of English law was secured by the customary oaths, as well as through the obligations to the crown which have already been mentioned. The admiralty jurisdiction was reserved for special grant from the lord high admiral.

The charter of 1691 may be called an *octroi* constitution without a bill of rights. In it the organs of government for the province were specified and powers were distributed among them. The advance in this respect upon the charter of 1629 was most marked. The chief distribution of powers was between the executive and the two houses of the legislature. As one of these departments derived its authority from the crown and the other mainly from the inhabitants of the colony, the division of power between them was a compromise. It expressed the truce which had been reached between the two parties or forces which had been contending for the mastery in Massachusetts ever since the Restoration. But even the compromise of the charter did not satisfy either party. For the purposes of the crown it did not go far enough; for the king and his advisers would have preferred a royal province pure and simple, while the Massachusetts of 1691 was still fundamentally a commonwealth with a provincial executive or superstructure. The majority of the colonists would have preferred the continuance of the old system with certain modifications, and this Mather found to his cost when he returned and undertook to defend the new charter as the best that was practicable. The charter of 1691 embodied or suggested many of the principles which appeared in the whole series of royal commissions and instructions which preceded it; but much was also there which came from the corporate colony. It was understood to be a fundamental law, to which every statute of the colony and, if

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possible, every royal instruction must conform. It was thus to enjoy a permanence which was never conceded to merely royal commissions and instructions. It really defined anew the conditions under which the perennial strife between people and crown, liberty and prerogative, was to be continued.

As in the system of government which William Penn first devised for Pennsylvania, so here, the weak point was the elective council. The course of colonial history shows that in the provinces an appointed council was necessary to give adequate strength to the executive and to act as a moderating influence between the governor and assembly in time of conflict. But in Massachusetts the council was exposed to serious attack from two quarters. Those of its members who dared to oppose the assembly would fail of reëlection; those who opposed the governor would be vetoed upon reelection. In quiet times resort to such tactics would not be necessary. But in storm and stress between the assaults of the assembly and of the governor the council was about sure to be reduced to a state of powerlessness. "We have sometimes seen," wrote *Massachusettensis* nearly a century later, "half a dozen sail of tory navigation unable, on an election day, to pass the bar formed by the flux and reflux of the tides at the entrance of the harbour, and as many whiggish ones stranded the next morning on Governor's Island." But the final outcome would be favorable to the assembly, for it left the governor standing practically alone, without a permanent body upon the support of which he could depend in his struggle to maintain the prerogative.

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CHAPTER XV

THE REVOLT OF LEISLER IN NEW YORK. AN ASSEMBLY PERMANENTLY ESTABLISHED IN THAT PROVINCE

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THE succession of events in time has been to an extent ignored in order that the transition in New England might be followed to its close. But New York, the other centre of the dominion, also reflected in characteristic fashion the effect of disturbances at Boston and in the parent country. The population of New York, whether French, Dutch, or English, was Protestant like that of New England; but its Protestantism was not distinctly hostile to that of the English Church. Except among the towns of eastern Long Island, the Anglicanism of the officials and of their co-religionists was viewed with comparative indifference, so long as they did not claim the extreme privileges of an establishment. As things then were, dissent in New York was less pronounced and was more consistent with loyalty to the crown than it was in New England.

Its spirit of loyalty, combined with a degree of religious indifference, was such that New York had tolerated without question the presence of a Catholic governor in the person of Thomas Dongan. A few Catholics had also been admitted to other and inferior offices: Matthew Plowman to that of collector of the customs at the port of New York, Major Jervis Baxter, commander of the fort at Albany, to a seat in the provincial council, while Bartholomew Russell held a post as ensign in the garrison at New York. A Jesuit father, John Smith, had quietly performed the services of his church under Dongan. But Dongan had given place to Andros in 1688, though the ex-governor was still residing in East Jersey or on his estate at Hempstead. At the time of the revolution in England the four inferior offices mentioned were the only ones which were held by Catholics in New York. To that extent the spirit of the

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test act had been violated, but no complaint had been uttered that the appointments were inconsistent with colonial law. Had it not been for the anti-popish excitement which developed in England and in other colonies, the few Catholics who held office in New York, with their sympathizers, would have been left undisturbed for years to come. But as soon as the effects of this frenzy began to be felt in the provinces, action was taken for the removal of the Catholics. Before the close of May, 1689, Baxter and Russell were suspended from their offices.

Plowman was allowed to continue in office about a month longer, when he was superseded by a board of Protestant commissioners which acted under the authority of the provincial council. By these acts the only cause for anxiety which might have its origin in the presence of Catholic office holders was removed.

But this, in the opinion of the highly sensitive, relieved the situation to only a slight extent. Francis Nicholson, the lieutenant governor, three years before, in the king's camp on Hounslow Heath, had knelt when mass was celebrated, and had thus identified himself with the throng of easy conformists who, for the sake of rank and office, were suspected of being ready to jeopardize English Protestantism. It was easy to assert that among the merchants and leading families of New York were many others whose religion was so much a matter of indifference that they would easily follow such a course, or even now were in secret league with Catholics for the purpose. So long as Dongan remained in the province or in its neighborhood, his name could be conveniently cited as an indication of the centre about which such imaginary plots might gather. Tales were invented to this effect and were given as wide circulation as possible ; while, as a plausible addition to them, it was suggested that Dongan and Andros were in communication, and that the escape of the latter to Rhode Island meant their active coöperation for the reëstablishment of King James' government. It was indeed possible that if Andros had been able to escape from Boston before his arrest he would have gone to New York and have there continued to

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exercise his authority as governor general of the dominion. But of any purpose on his part, or that of Dongan, to unite in support of a Catholic reaction there is not the slightest evidence, or even the slightest ground of probability.

But, at least for purposes of agitation, some weight was given to these imaginings by the probability that the revolution in England would lead to a war with France. This, if it came, would involve Canada and its Indians in a struggle with the colonies. The feud between the Canadians and the Iroquois would be renewed, unless the influence of Jesuits — who were already laboring among them — and of French traders and officials should prove sufficient to change the violent hostility of the Indians into friendship. In any case the province of New York, because of its central position, would be peculiarly exposed to attack. If the fidelity of the Iroquois to the English, for which both Dongan and Andros had striven, should be continued, attacks from the north might be confined to the frontier. But if the French should win the cantons over to their alliance, no settlement in the province would be free from danger of Indian attack and massacre. Should the French send a fleet to colonial waters, what port lay more conveniently open to attack than that of New York? Some steps had been taken by Nicholson and his council, under orders from Andros, to repair the fort at the end of Manhattan [1] island, but nothing effective had been done. We are credibly informed that he left it much out of repair, with several of the cannon unfit for service and others without platforms on which to mount them. The supply of good powder was very small,[2] and even the best, with guns of the calibre which were then available, could not be relied on to carry a ball across the river. Owing to the extent of the harbor and the width of the estuary, the same difficulty existed at New York which had been felt at the mouth of the James. The garrisons also, both at New York and Albany, were small and weak, while in the fort at the latter place the men were not sure of a supply of drinking water. How slight was

[1] N. Y. Col. Docs. III. 590. [2] Doc. Hist. II. 10 (large paper ed.).

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the prospect that the English could withstand an attack even of a small French squadron! Conditions had not essentially changed since Stuyvesant, in 1664, acknowledged the inadequacy of coast defence in the colonies to withstand an attack from the water. The situation, so far as it was understood, could not help producing disquiet and might thus prepare the minds of many for believing exaggerated stories of danger.

But had fear of Catholic plots and of French attacks been the only elements in the problem, the natural and almost inevitable action would have been the union of all groups of the population in a welcome to William and Mary and in their proclamation by the existing government of New York without delay. The Dutch could hardly have acted otherwise. There was no reason why the Protestant English should hesitate to loyally accept the decision which was actually reached in England; in fact their conduct, when fairly interpreted, reveals no other inclination. The other minor elements in the population were either of the same mind or were so few in number that their attitude may be neglected. But among the population of New York city and of the southern part of the province generally, there had always been a more or less widespread dissatisfaction with the form of government under which they lived. It reached a maximum among the towns of eastern Long Island, while because of their remoteness and character as small frontier and military outposts, it was least felt in Kingston and Albany. It was the feeling with which autocracy is always regarded by the common people, by those who bear the burdens of society, and have no share, or think they have none, in its benefits. The seaport towns, and especially those at or near the seat of government, abounded in people of this class. The farmer and tenant also naturally had such feelings, but his isolation and sluggishness of temper obscured or prevented their expression. The natural equality of men and the right of all to share in the exercise of political power was the thought which they cherished and which on occasion they would spontaneously express. It is but human to desire and claim some share in those activities by which

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human fortunes are mainly determined. We see this manifesting itself on occasion among the unenfranchised in all the colonies. In none was political life too sluggish or inarticulate to wholly exclude it. Indeed, the history of the nation at large consists to no small extent in the gradual awakening of that consciousness and the development of means for giving it expression.

We have seen this feeling asserting itself from time to time in protests against the autocracy of Kieft and Stuyvesant in New Netherland, and in demands for a tax-granting assembly after the English conquest. But though such assemblies had been established in all the other colonies, efforts to secure one in New York had been followed by no permanent success. The narrow, though not especially corrupt or oppressive, official system which the Duke of York had established, still existed, and events of recent years seemed to threaten its indefinite continuance and extension. It was the desire to be rid of that, intensified by the personal jealousies which always form an element in social crises, that furnished the determining motive for the attempted revolution of 1689–1690 in New York. Rumors of a Catholic plot were circulated in order to furnish an additional incitement. Reports of conflicts in Europe which were likely to be extended to the colonies were utilized as a means of agitation. It was a blind and ill-considered movement, led by a fanatical German, and assumed at the outset the form of a mutiny among the train bands of New York. But in due time, as the insurgents gained the upper hand, they sought to legitimize their position by the forms of election and by various appeals to the people of the province. As a means of securing the acknowledgment of the accession of William and Mary — the ostensible object of the revolt — the movement was not needed. From beginning to end it had not a shadow of legality. It was also characterized by much that was crude and arbitrary, this being largely due to the inexperience of its leaders, to their varied nationality, and to the military character which always attached to the uprising. But it did restore to New York for a brief interval some semblance of representative insti-

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tutions, and thus it holds its place in that series of events — mainly protests — which began with Kieft's board of Nineteen and which finally resulted in the permanent grant of a legislature to New York in 1691. The efficient agent in the issue of that grant was the government of William and Mary in England, and it was made as a part of a settled policy, unaffected by the domestic broils within the province. And yet the so-called Leisler rebellion appears as an important phase in the transition from the dominion of New England and primitive New York, with their autocratic government, to the later constitutional system of the eighteenth century. It revealed the crude and heterogeneous materials from which, if ever, a constitutional opposition in New York must be developed; while for years after its dimly realized ideals furnished a rallying cry for the various elements of discontent and opposition which survived in that province.

It was by way of New York that Governor Andros first learned of the landing of William of Orange in England. The news was brought thither early in February, 1689, by a coasting vessel from Virginia.[1] Lieutenant Governor Nicholson at once despatched the information to his chief, who was then in the eastern parts, but tried to keep it secret in New York. About a week later Jacob Leisler also received a report of the event by way of Maryland. Leisler had come to New York as a German emigrant some thirty years before and had prospered financially as a merchant. His marriage had connected him with both the Bayard and Van Cortlandt families, but had not served to procure him an introduction into their social circle, because he was rough, unrefined, and uneducated. The envy and dislike toward them which was thus engendered was increased by lawsuits and probably by superciliousness on the one side and an ungovernable temper on the other. Thus originated the personal element which was to influence the approaching conflict, an element which has played so large a part in all later partisan struggles in New York. At the time of

[1] N. Y. Col. Docs. III. 501, 660; Brodhead, II. 549; Colls. N. Y. Hist. Soc. Fund Series, 1868, 241; Pa. Col. Recs. I. 246, 249.

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which we speak Stephen Van Cortlandt, Nicholas Bayard, and Frederick Phillipse were the resident councillors who were at hand to assist the lieutenant governor in the crisis. The other members of the council from New York were either with Andros in New England or in the remoter parts of the province. Of the resident councillors Van Cortlandt was mayor of the city of New York. He was also brother-in-law of Peter Schuyler, the mayor of Albany, and was one of the most prominent and wealthy men of the province. Nicholas Bayard was a nephew of the late Director Stuyvesant, an ex-mayor, and also a man of large wealth and experience. Both these men possessed energy and ability, and together they constituted the chief strength of the conservative group in the southern part of the colony. But the wealth of Phillipse was his sole title to office. In a fashion which was characteristic of New York, and of modern England as well, all three were interested in trade; but their wealth gained in that pursuit was being steadily invested in land, and two of their number founded families which were to stand at the very head of the local aristocracy.

The lieutenant governor and councillors do not seem to have been alarmed for the peace of the province until after news was received of the uprising of April 18 in Boston. A trustworthy report of this reached them on the 26th and was "a great surprizall." Being but four in number, they resolved to invite the mayor, aldermen, and common council of the city to meet with them for joint advice and coöperation. With them were also associated the chief officers of the train bands of the city. This brought in such men as Francis Rombouts, Balthazar Bayard (a brother of Nicholas), Johannes Kip, Peter de la Noy, Gabriel Minvielle, Abraham De Peyster, Jacob Leisler, and Isaac de Riemer. All of these were prominent as merchants and officials in the little capital. Joint meetings of what were essentially the social and official leaders of New York city, men who also possessed an indefinite and varying influence through the province, were continued in this form until about the close of the first[1] week in June. On May 2, because of the difficulty

[1] Colls. of N. Y. Hist. Soc. Fund Series, 1868, 244, 245, 272–290.

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which the officials of the city found in attending, a committee of two aldermen, two councilmen, and four military officers was chosen to represent them. The business which came before the joint meetings mainly concerned the defences of the city and the maintenance of order therein. It was voted to systematically fortify the town, laying out the defences according to its ancient bounds. Committees were appointed to estimate cost and the materials needed and to make provision for the same. As the garrison of the fort was weak, it was resolved that the train bands of the city should assist in keeping guard there, and Councillor Bayard, who was also colonel of the city militia, was requested to issue orders accordingly. It was felt that by this measure jealousies which were cherished by some persons concerning the control of the fort would be removed. As events were soon to show, this proved to be a fateful step. It furnished the immediate occasion and opportunity for the revolt.

On May 11[1] the joint meeting resolved that the several counties should be invited to send delegates "to joine with us in the Common Councill, and if anything of moment offers to render account to their severall counties as they think fitt." But this suggestion, which might have opened the way to most important results, was not then to bear fruit. The lieutenant governor and council had continued to meet at intervals by themselves, and they naturally retained in their own hands the activities which concerned the province as a whole. It was far from their thought to allow political activity, especially at such a crisis, to pass beyond legally appointed officials. They had in fact anticipated such action as that just suggested by sending for the justices[2] of the peace, and military officers of Kings, Queens, Westchester, and Richmond counties, and of Bergen county in East Jersey, and also to Colonel Andrew Hamilton at Perth Amboy, in order to prompt them to their duty in maintaining the general peace and security. A part at least of the officials from each of the counties named duly appeared and promised to do all they could to keep the country quiet,

[1] Colls. of N. Y. Hist. Soc. *ibid.* 280.

[2] *Ibid.* 245 *et seq.*

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while those adjacent to the sea coast agreed to keep watch against the possible approach of French or other enemies. Orders to preserve the peace were also sent to the magistrates of Ulster county and to the commander of the fort at Albany. Letters were sent to the royal councillors whose residence was in southern New England, but only a few replied.

Soon after the beginning of May reports came of disorders in Westchester, Queens, and Suffolk counties, which had resulted in the expulsion of the magistrates and military officers from their places and the election of others in their stead.[1] In Queens county and in New York city the militia who had served under Dongan at Albany demanded their arrears, and it became necessary to order their payment, that the effects of an armed demonstration might be averted. The towns of Southampton, Easthampton, and Huntington sent a delegation to New York to demand that the fort there be placed in the hands of men whom the country should choose. False rumors from Boston about the alleged collusion of Andros with the French and eastern Indians had tended to disturb the Five Nations and it was necessary to reassure them. These circumstances go to prove that there was genuine cause for anxiety concerning the peace of New York, and that the governor and councillors were aware of the fact. To that effect indeed they wrote, on May 15, to the secretary of state and the plantation committee, sending their message by John Riggs, a servant of Andros who had recently arrived from Boston.[2]

On May 30 and the day following, affairs came to a crisis at the fort in New York city. A difference arose between two subordinate officers, one of the militia and the other belonging to the regular soldiers of the garrison, respecting their right to station a sentinel at the sally port. Though in ordinary times an incident like this would have had little significance, it is likely that there had been signs of insubordination among the militia which gave a serious aspect to

[1] Colls. of N. Y. Hist. Soc. *ibid.* 252, 254; N. Y. Col. Docs. III. 557, 577, 592.

[2] *Ibid.* III. 574, 593; Brodhead, II. 561.

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every deviation from routine. When the affair was reported to Nicholson, though he had first proposed that the garrison be reënforced by the train bands, he both spoke and acted as if he supposed the latter to be already on the verge of mutiny. With great vehemence he declared that he would rather see the town on fire than be commanded by them. When this utterance was made known through the town, it was at once magnified into a report that the governor had threatened to burn New York and even to massacre some of the inhabitants. With this was coupled the charge that Nicholson and his Dutch councillors were papists.[1]

When the council met the next forenoon, Nicholson[2] stated that most of the city militia, incited by some of their officers, were in rebellion and would receive no commands either from him or from Colonel Bayard. He therefore requested the mayor to convene that afternoon at the city hall the officers of the city government and the militia officers to advise concerning what should be done. When they were met, Leisler not being present, Lieutenant Cuyler, the officer with whom the governor had had the encounter the previous evening, appeared and made his complaint. Nicholson denied the part which related to any alleged threat by him to burn the town. But high words following, he demanded Cuyler's commission and removed him on the spot. As Cuyler affirmed that he had acted under the orders of his captain, Abraham De Peyster, that officer was now offended and left the town hall in anger. The governor sent for him to return, but in vain. Drums were at once beat. The people gathered tumultuously and under arms. Leisler's company, led by his ensign, Joost Stoll, marched to the fort, where they were soon joined by their captain himself. Colonel Bayard was sent thither by the joint meeting in order, if possible, to bring the men to reason; but Stoll, who at the time was under the influence of liquor, replied that they disowned the authority of the government and would have the keys of the fort and the stores also.[3]

[1] Doc. Hist. I. 8; N. Y. Col. Docs. III. 593, 640.

[2] N. Y. Hist. Colls. *op. cit.* 268, 288, 292; N. Y. Col. Docs. III. 593 *et seq.*

[3] N. Y. Col. Docs. III. 637; N. Y. Hist. Colls. *op. cit.* 288.

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As evening approached, Captain Lodwick and his men mounted guard, and an armed force under a lieutenant was sent to the city hall to demand the keys. At this point the weakness of the government was decisively shown. Nicholson asked the joint board of councillors what he should do. Their answer can best be given in the words of the original record: "This Board for to hinder and prevent bloodshed and further mischief and for endeavouring to quiet the minds of the people think it is best, considering they being forced to itt, to let them have the keys. His Honor proposing to this Board what way or whether any means may be found to reduce this people from their riseing or what other method may be taken to bring them to their former obedience, This Board are of opinion that there is noe way to reduce them by force, but their advice is, since they are rise [n] on their own heads without any aid, that they be lett alone for some time."

Nicholson immediately delivered the keys and did not visit the fort again. This was indeed an important decision, for it left the mutineers to their own course, men who were not simply civilians, but who were enrolled and in service as militia and were thus properly subject to military discipline. It sealed the fate of the Andros régime in New York as effectually as did the Boston uprising of April 19 in New England. In a contest with an armed faction of the people the New York executive found itself without available resource, for the handful of poorly equipped garrison troops counted for nothing in the crisis. Though the great majority of the inhabitants of the province were loyal to the government in a more or less quiescent way, they were unorganized and the officials were not able to make their support effective. So it was at similar junctures in all the colonies, and as a result the most assertive group among the inhabitants, whether larger or smaller, had its way. If correction of this came at all, it came tardily and usually in very imperfect degree, from the interposition of the home government.

The militia captains now agreed to keep possession of the fort until orders should be received from England, and they took their daily turns in actual command there. Before the

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close of the 31st they issued a declaration in which the key-note of the revolt was sounded. It was that they had long suffered under an arbitrary popish power, to which they were "Entirely and Openly Opposed"; they would now keep guard till a person of the Protestant faith, appointed by the newly installed Protestant government in England, should come to demand the surrender of their charge.[1] On the next day (June 1) Leisler comes more decisively to the front. As there were signs of a reaction[2] and some desired Bayard to resume command and act against the governor, Leisler and his immediate associates began to proclaim through the town by word of mouth and written "pamphlets" that not only the governor but all the members of the council were papists, rogues, and traitors, creatures of the late King James for whom they intended to secure the province. When it came Leisler's turn to command in the fort, he urged that the inhabitants should be summoned and sign an agreement not to permit this. He also arranged for all the militia companies to come to the fort on a given signal and to disobey their officers if they should try to prevent them.

The next morning (June 3) a false alarm was raised that some French vessels were within Sandy Hook. Thereupon the train bands flocked to the parade ground and thence into the fort, shouting and huzzaing, and all the efforts which Bayard could make to prevent this were unavailing. Much the larger part of those who were concerned in this demonstration were Dutch and did not fully understand what they were doing. Some among them were made to believe that they would be wholly separated from England, would be restored to the condition they enjoyed in 1660, and would obey only the Prince of Orange. Leisler now had the six captains and four hundred of their men sign a statement, which was issued as a proclamation, in which the resolve was declared to hold the fort until orders should come from the Prince of Orange. This meant substantially the same

[1] N. Y. Hist. Colls. *op. cit.* 346; Doc. Hist. II. 7.
[2] N. Y. Col. Docs. III. 637, 638.

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as the previous declaration, but its interesting Dutch coloring was probably given to suit the needs of the moment.[1] That this is true was at once made evident. Leisler and his men saw to it that all messages of importance from abroad were first brought to the fort, and among these came news, by way of Barbadoes, that William and Mary had been proclaimed king and queen. In the name of the militia companies an address was sent to them fully acknowledging submission, and offering that, in harmony with the declaration of their Majesties and of the Lords and Commons, they were preserving the province from the chance of betrayal to a foreign enemy.

The news which had come into the possession of Leisler on June 3, came at the same time to the hand of the lieutenant governor.[2] It was a copy of the *London Gazette* of February 14, which contained the king's proclamation continuing all Protestants in office in England. Nicholson might have acted on what this suggested and have proclaimed their Majesties in New York. This would have removed every shadow of justification from the plea of the insurgents. But again Nicholson chose the course of the weak man, and, after consulting his councillors, resolved to go to England and report.[3] Within a week he sailed, taking with him in the form of letters all the information which at the time it was necessary to give. He had virtually deserted his post, for, though he left the three councillors in charge, they were even less able than Nicholson himself had been to resist the movement of which Leisler had now made himself the head, and they were soon driven from the city or lodged in prison. The revolutionary tendencies of the Leislerians now speedily became evident, and their methods were characterized largely by reckless denunciation and resort to physical force.

Communication having been opened with Connecticut, two emissaries were sent from that colony to the Leislerians. They brought with them a printed order to proclaim William

[1] N. Y. Col. Docs. III. 594, 595, 638; Doc. Hist. II. 3.
[2] N. Y. Col. Docs. 585, 586, 587.
[3] Colls. of N. Y. Hist. Soc. *op. cit.* 270–272.

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and Mary. As soon as this fell into Leisler's hands he proclaimed their Majesties in the fort. He then went to the city hall and there repeated the ceremony, using opprobrious language to Mayor Van Cortlandt and taking his honor, with some of the city officials, back to the fort to drink the king's health. But a few days later a printed copy of the order of February 14, continuing all Protestants in their offices in the colonies, came into the mayor's hands and he had it duly published. This angered Leisler, and he sought on all occasions to nullify its effect by denouncing all except his own associates as papists. A conspicuous instance of this soon occurred. The councillors and city magistrates suspended Plowman, the Catholic collector, from his office and appointed four commissioners, of whom Colonel Bayard was the head, in his place. But when they were proceeding to do business at the custom house, Leisler appeared at the head of a body of armed men, drove out the commissioners, and installed his chief lieutenant, Peter de la Noy, as collector. Such violence was on this occasion shown toward Bayard that he fled for safety to Albany, where of course his influence was used to strengthen the conservative spirit of the burghers. But his family and estate remained exposed to the outrages of the insurgents during his absence, and when later he ventured to return, he was thrust into prison, where he remained until the restoration of legal government. The mayor's court adjourned for four weeks and seems not to have met again. Van Cortlandt remained in the city, but without influence, until autumn, when he too was forced to seek refuge in flight. With this the last vestige of government as organized in the dominion of New England vanished.[1]

The various features of the revolutionary government now revealed themselves. Though the revolt had originated with the militia of the city, Leisler and his supporters saw the necessity, if possible, of controlling the whole province and of making their influence widely felt in the general affairs of the colonies. They began by returning to the forms of

[1] N. Y. Col. Docs. II. 595, 596, 617.

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civil government. An invitation was issued to the counties and towns to choose delegates to a convention. The response to this came wholly from the southern part of the province, and even there Suffolk county and the larger part of Queens declined to take action. Delegates appeared from New York, Richmond, Westchester, and Orange, from Essex county in East Jersey, and from four towns at the western end of Long Island. We must suppose that, even in these communities, the majority of the population were indifferent or opposed to this novel appeal. The settlements of the middle and upper Hudson made no response whatever. The only information which we have concerning the opinions of the delegates chosen comes from John Tudor, an opponent. He wrote to Nicholson that they were "Oliverians," and that some of them declared that there had been no legal king in England since the days of the Protector.[1]

The convention met, on June 26, in the fort in New York city. Of its deliberations we have no knowledge. We know that, in probable imitation of procedure at Boston, it chose a committee of safety, and that it received some promises of assistance from agents of Connecticut. The committee, acting it is said under the influence of a threat from Leisler, designated him as captain of the fort, with authority to hold it till further orders from England. In his commission he was assured of assistance from city and country in repelling foreign enemies and suppressing internal disorders. A chest of money — the same apparently which Nicholson and the council had long before ordered Plowman to deposit in the fort — was now opened and used for the payment of charges. Leisler assumed authority to sign all passes for vessels. All incoming letters of importance were taken to the fort and opened. A permanent guard of fifty men was organized. The work of improving and extending the fortifications was begun and vigorously prosecuted.[2] The walls of the fort were completed, the powder house repaired, the well opened, platforms made and guns mounted, a semi-circular work known as the "half-moon" built behind the

[1] N. Y. Col. Docs. III. 617; Brodhead, II. 573.

[2] N. Y. Col. Docs. III. 607, 608, 609; Doc. Hist. II. 5, 6, 13, 230, 246.

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fort to the westward. Armed detachments were sent out to arrest so-called papists, and many such suspected persons were haled to prison. Alarms were utilized to facilitate this process. Correspondence was opened as widely as possible with the New England colonies and with the Coode faction in Maryland for the purpose of promoting general alertness against suspected Catholic and French sympathizers. In activity of this nature Leisler showed great vigor, and a degree of life was infused into measures of defence such as New York had never known before. War in Europe had already begun. It was imminent in the colonies. In the sphere of military preparations for this crisis Leisler did his best work, and he used the powers of a military dictator for the purpose. In the process the civil aspects of the government were largely obscured and its military and autocratic features prevailed. He practically assumed a dictatorship over the southern part of the province, and it was in recognition of that position that, at the middle of August, the committee of safety appointed him commander-in-chief, with full executive and military powers as well as discretion when, if ever, he should consult the civil authorities.[1]

It was now that Jacob Milborne, who had recently returned from England, became Leisler's chief adviser,[2] and later the husband of one of his daughters. Through his family Milborne was of Baptist connection, and years before he had had some differences with Andros. He now sought to justify the introduction of a system of elections for filling city and county offices in New York on the theory that William had been brought to the throne of England by the common voice of the people and was an elective king. But to this ultra-Whig theory could as well be opposed the view that William had won his crown by the sword and that this would justify a military despotism in New York.[3] As Leisler for the time being held the power of the sword, he could well afford to institute elections which he was sure of being able to control, and the theory which

[1] Doc. Hist. II. 14, 26. [2] N. Y. Col. Docs. III. 674.
[3] Brodhead, II. 577.

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best suited his purpose could at the proper time be mustered into service. Nothing is more common than to further revolutionary movements in this way. When, at Michaelmas, 1689, the time for the annual election in New York city came around, a mayor, sheriff, and town clerk were for the first time elected, though it is said that only seventy or eighty persons voted. The terms of the city charter were clearly violated by this act, but Peter de la Noy, one of Leisler's chief supporters, was elected mayor, and another young but active friend, Abraham Governeur, was made clerk.

Albany had received a charter from Governor Dongan which was very similar in terms to that which he had granted to New York. Peter Schuyler was its mayor, Dirck Wessels, recorder, and Robert Livingston, clerk, all appointees of the governor. As in New York, the offices of aldermen and common councilmen were filled by election, and this was regularly held, as usual, in October. Leisler and Milborne now sought to obtain control of this city also, and with it of affairs in the northern part of the province. In view of the threatening activity of the French and Indians, the importance of this post was great, and the New Englanders, as well as Leisler, were eagerly watching the state of affairs there. Its inhabitants naturally welcomed the news of the expedition of their countrymen to England. They never ceased to express their loyalty to him and did not hesitate to take the oath of allegiance when it became known that he was king. On this score, then, there was no occasion for Leisler to be dissatisfied with their attitude.

But on August 1 the officials and commonalty of Albany, together with the justices of the peace and military officers of the city and county, formed a convention to secure the interests of their Majesties until further orders from England.[1] They met regularly under the presidency of the mayor and adopted all sorts of measures for the improvement of local defence. As Major Baxter had long since left the region, Lieutenant Thomas Sharpe, of the regulars, was designated

[1] Doc. Hist. of N. Y. II. 46 *et seq.*

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to command at the fort, and all took the oath of fidelity to William and Mary. They forbade all persons who were fit to bear arms to leave the city without permission. They watched carefully the temper of the Indians and sought information respecting the plans of the French. At first they endeavored to meet the cost of their enterprise by private subscription, and later resorted to New England, especially to Connecticut, for aid. A promise was received from that colony that it would send a relief of eighty men. The authorities at Albany disliked the mutinous proceedings of New York, and, though they applied to him for aid, Leisler refused to give it unless they sent delegates to his committee of safety. He would tolerate no divided authority in the province. But Albany was pursuing a course quite as independent as that of Leisler, though without his arbitrariness and show of force, for the unanimity of feeling in the north made those unnecessary.

Toward the close of October the Leislerians resolved that Albany must be reduced, and prepared to send up a body of armed men under the command of Milborne for the purpose.[1] When this was known at Albany, a protest was sent down by Alderman Van Schaick and Lieutenant Staats. The latter the insurgents won over by a promise of the command of the fort at Albany in the place of Sharpe. But Van Schaick faithfully delivered his message, which was to the effect that troops would be received only on condition that they should obey the command of the convention. But Leisler met this in his usual manner by declaring that Lieutenant Sharpe and Sergeant Rodgers were papists, and that Albany should produce its charter if it had one. Milborne was accordingly sent thither with fifty men.

When the convention at Albany heard that Milborne was approaching, an alarm was given and the citizens were summoned to a general meeting. By this body resolutions were passed to the effect that they would not permit the men from New York to enter the city until they were assured that they came in good faith and would submit to the control of

[1] Doc. Hist. of N. Y. II. 59 *et seq.*

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the local authority as established. The mayor, Peter Schuyler, was then appointed to the command of the fort, Sharpe being subordinated to him. The following day Milborne and his force appeared on the river below the city. He was admitted, but had to leave his men on the sloops which had brought them from New York. On being brought to the city hall, Milborne exhorted the burghers, in "a long oration with a high Stile and Language," to free themselves from the yoke of arbitrary power which a popish king and governor had imposed upon them. But in this plea for release from despotism under one of its forms appears a suggestion the object of which was to open the way for the entrance of Leisler's military government. It was that the city charter was void because granted by a popish governor. To this Recorder Wessels briefly replied, to the effect that arbitrary power did not exist in Albany, for they had taken the oath of allegiance and were acting, not in the name of King James, but of William and Mary. Milborne then delivered a letter of credence, signed by Leisler and twenty-three of his supporters.

On the following day, which was Sunday, Milborne was sent for to appear again before the convention. Recorder Wessels was now the chief speaker, and asked at whose cost and charge his soldiers had come. He replied, at the charge of the city of Albany. This the recorder showed was contrary to the terms which had originally been sent down to New York. And when the burghers were asked if they thought the county of Albany would be able to pay the charge, they unanimously answered, "No." Milborne then sought to enforce his authority by showing a commission signed by the same men whose names appeared on the letter read the previous day. But to this the recorder made the conclusive reply, that such a commission granted by a company of private men was of no force in Albany, and that he could exercise no authority there unless he was able to show a commission from King William, whom they were willing to obey. Milborne then addressed himself to the common people and urged them to elect new magistrates, for all, he said, was null and void which had been done under authority

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from James. But he was told that a legal election had recently been held, and, if that which he said were true, land titles would be unsettled and they would indeed be in a desolate condition. But Milborne had made an impression, and the following day a large number came together again at the city hall — so that the convention was forced to meet at the recorder's house—and were proceeding to choose Lieutenant Staats as captain of the company which had come from New York. In spite of a warning to disperse, about a hundred votes, mostly those of young men and non-freeholders, were cast for Staats, and he accepted the office. The entering wedge of a movement which was intended to divide Albany and in the end subject it to Leisler was thus driven.

Milborne now informed the convention that he was authorized by the committee at New York to "order the affairs at Albany"; but they firmly adhered to the position originally taken. All this time Schuyler had been personally in command at the fort. But on Thursday, the 4th of November, he came down to the convention at the city hall and explained the reasons which had moved him to seize and keep control of the fort. These were approved and the convention refused longer to parley with Milborne unless he would come fully to its terms. The following day[1] he marched to the fort with a body of armed men and demanded its surrender. Schuyler replied that he kept it in the names of their majesties and ordered the intruder away. But Milborne attempted to enter, when he was thrust out. He then retired within the town gates, where he raised the king's jack, facing the fort, and, having charged his men to load their guns with bullets, came out and began reading a manifesto. A band of Mohawks who were standing on the hill within sight now caused word to be conveyed to Schuyler that, if the New Yorkers attacked the fort, they would fire upon them. The burghers also read a protest against the bloodshed which was likely to follow. When Milborne was told that, if he marched in hostile array toward the fort, the

[1] Doc. Hist. of N. Y. II. 73.

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Indians would fire on him, he abandoned his effort and withdrew his men. Leaving his company in charge of Staats, he returned to New York[1] to report. Though these men were not put under the control of the convention, Staats agreed to take no action against that body. Thus the two rival factions faced one another, neither being able to control the entire province of New York.

While these events were occurring in the colonies, Nicholson had arrived in England. To his report had been added the information which came through subsequent letters from the members of the council and their friends. In August Leisler had sent the redoubtable Ensign Stoll, accompanied by Matthew Clarkson, to England, with a letter and papers from himself. This evidence was intended to convey Leisler's view of the imminent danger which had threatened New York from popish intriguers, the way in which it had been rescued by the revolt of the train bands, and what had been accomplished for the improvement of the defences of city and colony;[2] but no reference was made to his appointment as commander-in-chief of the province. It is needless to say that the representations of Stoll were not taken seriously by the British government, and no more were those presented from the same source by Benjamin Blagge several months later. Some two months before the arrival of Stoll Colonel Henry Sloughter had been appointed governor of New York, which was again reduced to its former boundaries.[3] The new appointee was destitute of most of the qualifications needed for the office, but, in accordance with what was now to be the established practice, he was empowered to call an assembly. This of itself would effectually remove the occasion for such crises as that through which New York was now passing. Stoll's companion, Clarkson, who had not been seriously involved with Leisler, secured the office of secretary under the new appointee. Nicholson, who was in reality better qualified for the post of governor than his successful rival, had incapacitated him-

[1] N. Y. Col. Docs. III. 647.
[2] *Ibid.* 614, 629–633, 732–748, 750, 763.
[3] *Ibid.* 623, 685.

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self for further service in New York by his withdrawal, and, as we have seen, was transferred to Virginia.

The opposition which Leisler had met with at Albany necessitated further assertions of his power. He therefore called his partisans together from New York, Kings, and Bergen counties and told them [1] that Nicholson had turned a privateer and would never show his face in England, while Bayard with three hundred men would attempt to recapture the fort. In consequence the watch was strengthened and a new declaration of fidelity to the king and queen, to the committee of safety, and to Leisler as commander-in-chief, was signed under dire threatenings if obedience was refused. Military officers, especially of aristocratic connections, whose fidelity seemed in any way doubtful were removed, and others, preferably from the class of artisans, were appointed in their places. It was at this time that Van Cortlandt and Bayard were pursued with especial vigor, while Phillipse found it to his advantage to submit to Leisler. With a view to future contingencies the thrifty ex-mayor, though for the time humiliated, was writing to Andros to remember him to Blathwayt, "that I might get here the Collectors place or at least that [the] commission of auditor with a certain sallery may bee confirmed unto [2] mee."

Soon after the arrival of Nicholson in England John Riggs was sent back with despatches from the king addressed to the lieutenant governor, "or in his absence, to such as for the time being take care to keep the peace and administer the laws" of New York.[3] The expectation of the crown was that the despatches would be received and the commands they contained executed by the members of the council whom Nicholson had supposedly left in authority. In conformity with this, the only legal course, Riggs, on his arrival at New York in December, prepared to deliver the despatches to the council. But before it could meet, Leisler summoned him to the fort, assuming that he himself was the man for whom, in Nicholson's absence, the packets were intended. Riggs, before delivering them, insisted that Phillipse

[1] N. Y. Col. Docs. III. 647, 648. [2] *Ibid.* 650. [3] *Ibid.* 648, 675.

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and Van Cortlandt should be called. When they came, it was only to state that they themselves were the officials to whom it was the king's intention that the packets should be delivered. At this Leisler burst into one of his many fits of passion, called them popish dogs and rogues, and ordered them out of the fort. Then the despatches were opened, and, on the strength of his interpretation of what the crown intended, Leisler assumed the title of lieutenant governor. William and Mary he now proclaimed anew and in stricter conformity with official forms. From the members of his committee of safety he had a council chosen, of which De la Noy, already mayor, was the leading member. Samuel Staats and Samuel Edsall were among its members. Milborne was soon appointed secretary of the province. Under the authority of an act of 1683 the collection of customs and excise was ordered, De la Noy being formally commissioned[1] as collector. Finding that taxes were not willingly paid, a so-called court of exchequer was later established, and punishments were inflicted to enforce payment. A court of oyer and terminer was opened in Queens county, De la Noy again appearing at the head of the commission. A new seal was struck for the province, and many of Leisler's supporters were appointed to offices in the southern counties. As we enter the year 1690, business was increasing in volume and was all being transacted in the name of the lieutenant governor or of the lieutenant governor and council. So far as possible, all who dared to question Leisler's usurped authority were silenced by imprisonment or other forms of intimidation.

In the view of Leisler one of the most important uses to which he could put his freshly usurped authority was to bring additional pressure to bear upon Albany. Captain Staats was accordingly ordered to take possession of Fort Orange, while to the officials of that locality he sent orders to hold elections for mayor and aldermen and to notify him of those whom they should choose for militia officers, so that he might send them commissions.[2] When the convention learned of this, they asked Staats if he could show them any

[1] N. Y. Col. Docs. III. 676 *et seq.*; Doc. Hist. II. 27, 28 *et seq.*

[2] *Ibid.* 30, 31, 81 *et seq.*

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direct authority through Leisler from the crown in support of his demand. This of course he was unable to do. The convention then formally voted not to recognize Leisler as lieutenant governor or obey his commands. An able manifesto was prepared, giving the reasons for their action, which was solemnly published at the fort,[1] January 13, 1690. But in little more than a month after this apparently decisive action was taken came the destruction of Schenectady by a force of French and Indians, an event that was even more dramatic in its completeness than others of a similar nature which had been occurring in northern New England, an impressive counter-stroke to the recent descent of the Iroquois on Lachine. This made it perfectly evident that New York, as well as the colonies to the eastward, had a war on its hands. Albany renewed its appeal to the New England colonies for aid, but Leisler urged the arrest of the envoys which it sent out. He at the time extended his negotiations with the colonies to the east and south with a view to organizing a joint movement against the enemy. Prosecutions against the remnant of the "popish" faction were redoubled. Milborne was again ordered to go to Albany, this time with two other commissioners, to take possession of the fort and assume the direction of all affairs there. Connecticut had already advised the magistrates at Albany to recognize the government at New York, in order that the province might present a united front to the enemy. That advice was now heeded. Milborne was admitted into the fort, while Schuyler and the other magistrates were recognized as legally in control of civil affairs[2] in the city. Ulster county was likewise brought into line.

It was in his tireless efforts to organize a joint expedition of the colonists against the French and Indians that Leisler appears at his best. His hatred of them was sincere and the expression of it in war was perfectly consistent with the half superstitious dread of their conspiracies which was one of the chief notions that led him to plunge into the revolt. It was the same spirit which in England had occasioned the

[1] Doc. Hist. II. 84, 86.

[2] *Ibid.* 100, 107 *et seq.*; N. Y. Col. Docs. III. 702, 708.

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tragedy of the Popish Plot. The history of his share in the prosecution of the war does not demand our attention here; it belongs in another connection. But it was the need of a larger and more permanent revenue, which was occasioned by the war, that led Leisler to issue writs in February, 1690, for the election of an assembly. It was in this measure that his effort to reach a stable form of government, where the civil power should resume its normal supremacy over the military, culminated. But here, as everywhere else, he was defeated by the repugnance which his own essentially military rule aroused. The response was so unsatisfactory that in March new writs had to be issued. Even then, as we are told by Van Cortlandt,[1] "Suffolk County would not meddle with it. From the other Counties came Representatives onely chosen by a few people off their side and, as I understand, very weak men." In New York county only "some few, being all off his side appeared," and they of course chose partisans of Leisler. As it was, New York, Westchester, Kings, Ulster, and Albany counties were nominally represented.

The assembly met for its first session in New York city on April 24, at the house of Robert Walters, a member from New York county, and a son-in-law of Leisler. John Spratt, another member from New York county, was chosen speaker. Two acts were passed, one for the levy of a tax of 3*d.* in the pound on real and personal property throughout the province, and another, the object of which was to take from the city of New York the monopoly of the bolting of flour which it had enjoyed since the administration of Andros and which the counties of Albany and Ulster in particular desired to share. But after the session had lasted a few days, because petitions were being presented for the release of prisoners and the redress of grievances, Leisler prorogued the assembly until September. Two months later Leisler himself was assaulted by rioters in the streets of New York, who took this means of demanding the release of political prisoners and of protesting against the payment of the taxes which he levied.[2]

[1] N. Y. Col. Doc. III. 717; Doc. Hist. II. 104; Brodhead, II. 615.

[2] N. Y. Col. Docs. III. 740–748; Doc. Hist. II. 158, 163, 200; Brodhead, II. 623.

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During the second session, which was held after the close of the unsuccessful campaign of the summer, an act was passed declaring that the courts should be kept open and accused persons should be assured a legal trial; but coupled with this was a requirement that those who had fled from the province should return within three weeks after the publication of the law, on pain of being treated as disobedient. Another act, the purpose of which was to overcome the general repugnance to holding office under the new government, provided for a levy of a fine of £75 on any person who should refuse to accept an office, civil or military. The same act also provided that any one who should leave the counties of Ulster or Albany without permission should be fined £100, and that all who had left those counties must return within fourteen days at their utmost peril. The sending of merchandise from those counties down the Hudson without the governor's license, the act declared, would be followed by its confiscation. Provision was also made for the levy of another tax for the support of a garrison of two hundred men at the fort. It is clear that the object of these acts was largely military. They were war measures, and that character attached to all of Leisler's acts, even in spite of himself. Though the courts were open, it was never certain that the summary methods of the soldier would not dominate their procedure. Milborne, if correctly reported, described the situation with accuracy. When asked, in connection with a hearing in reference to the imprisonment of Philip French, if the governor and council sat in a civil or military capacity, he answered, "Both."[1] In October and November Milborne was busy under a commission to search houses and vessels and arrest delinquents in an effort to suppress incipient revolt in Queens county.[2] The fact is that the Leislerians were never able so far to escape from the character of mutineers, or to establish themselves so firmly in the seats of authority, as to show what they were capable of as civil rulers. The same was true of Bacon and

[1] N. Y. Col. Docs. III. 680.

[2] This had taken the form of a joint meeting of the freeholders of Hempstead, Jamaica, Flushing, and Newtown, and on their behalf John Clapp wrote to the secretary of state. *Ibid.* 754.

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his followers in Virginia. And, even had insurgents of their character decisively gained the upper hand, the shadow of the home government still rested upon them. Its power was slow in making itself felt, but in the end it was sufficient. The time was now approaching when Leisler must yield before an expression of its authority which he could not gainsay.

The omission of the name of Leisler or those of his supporters from the list of appointees to Governer Sloughter's council, and the inclusion of Phillipse, Van Cortlandt, and Bayard among the number, clearly indicated the attitude which the home government had taken. Indeed, it had never shown the slightest tendency to recognize Leisler, and under the circumstances the attitude which it took was the only possible one. Among the other appointees were Gabriel Minvielle, William Nicolls (formerly secretary and imprisoned with Bayard), Chidley Brooke, Thomas Willett, and William Pinhorne. Brooke was also appointed collector and receiver. All the papers which had been received from Leisler and from those who with him had called themselves the council of New York, were delivered to Sloughter, with an instruction to strictly and impartially examine the allegations and return a true account of the state of the province. Two companies of troops were detached to accompany the new governor, one of which was placed under the command of Major Richard Ingoldesby, who had recently served under William in Ireland. Joseph Dudley returned to the colonies with Sloughter and Ingoldesby, though the three vessels which carried them did not leave England until December, 1690. Ingoldesby, with his soldiers, reached New York about the close of January, 1691. Sloughter, however, from whom he had been separated on the way over, did not arrive until nearly two months later.[1] It was the events of those two months which enabled Leisler's enemies to fix upon him the charge of treason, for his previous conduct, though it was seditious, was not treasonable.

[1] N. Y. Col. Docs. III. 759, 766.

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Immediately upon his arrival Ingoldesby demanded possession of the fort.[1] For action of this kind, however, he had no express authority, though the fort was the place for the lodgment of the king's troops and their stores. Had they been admitted there with their commander, Leisler's authority would have been seriously compromised, if not destroyed. For Ingoldesby boldly declared that Leisler could derive no authority from the king's letter to Nicholson and those who for the time held authority in New York. His own arrival, too, was the signal for renewed activity on the part of the council. Leisler at once learned, to his anger and dismay, that Phillipse, Van Cortlandt, and Bayard were named among the members of the new council. The delicate situation thus arose which was sure to result when Leisler was confronted with the authority of the king, backed by real force. But he doggedly adhered to the course which he had originally chosen and refused to recognize any authority that might imperil his own until the arrival of the royal governor. He offered Ingoldesby and his men accommodation in the town, but this was declined. Ingoldesby interpreted this course as involving direct opposition to the king's commands, and issued a warrant calling for assistance from Long Island. Leisler replied with a protest and a proclamation calling out the militia, in order that they might be ready to repel by force any opposition to parleys or any attacks on the fort, city, or parts of the province.[2] However, on a declaration from Ingoldesby that he had no intention of molesting the people of New York, but rather that he desired to protect them in peace and quietness, Leisler, on February 3, ordered that the major and his troops should be received and lodged in the city, but he expressly refused to surrender to him the fort. Still, at the same time, he professed his willingness to yield it to Sloughter on his arrival, and later sent a letter to the governor to the same effect. It was under these conditions that Ingoldesby's men were landed and lodged at the city hall, and those who

[1] Colls. N. Y. Hist. Soc. *op. cit.* 300 *et seq.*; Doc. Hist. II. 632 *et seq.*; N. Y. Col. Docs. III. 765; Brodhead, II. 632 *et seq.*

[2] Doc. Hist. 181 *et seq.*

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were gathering in arms under Ingoldesby's authority on Long Island were ordered to disperse.

But amid the bitter feelings which existed and with two rival military bodies in the little town, it was difficult to keep the peace. As the weeks passed relations became more strained. Dudley came on from Boston and the councillors who were at liberty attempted to prove that theirs was the only legitimate authority in the province. Appeal was made to Connecticut, first for advice and later for assistance. The councillors kept turning to Long Island for reënforcements against the "rebels." Through their influence and that of Ingoldesby, Leisler's authority outside the fort was being seriously curtailed. He complained that his efforts to collect the tax voted by the assembly at its last session were thwarted, to the great injury of the common service against the French. Friction between the troops in the town increased. Leisler, in order to protect himself, secured what stores and reënforcements he could. He turned the cannon in the fort toward the town, and took possession of neighboring blockhouses. This led to counter efforts on the part of Ingoldesby's men. Two long protests were issued by Leisler against the conduct of his opponents,[1] one ending with a declaration that he would resist them to the utmost of his power if they did not disband their forces and assume a peaceful attitude. As this proclamation was of course not obeyed, on the next day (March 17) Leisler began firing on Ingoldesby's force. The fire was returned, and by the shots two of the king's soldiers were killed and several on that side were wounded.

On the day following this encounter Governor Sloughter arrived in the lower bay. When he was informed of the disordered condition of the town, he at once left his vessel and landed, March 19. Going at once to the city hall, his commission was read and several of the councillors were sworn into office. Ingoldesby was then sent to demand the surrender of the fort and the release of the two councillors who were imprisoned there. Obedience to these commands

[1] Doc. Hist. II. 193; Colls. N. Y. Hist. Soc. *op cit.* 306.

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was refused, and orders were required under the king's own hand, directed to Leisler himself. Stoll was also sent to ascertain if the new arrival was indeed Sloughter himself, whom he had known in England as the king's appointee. After Stoll had satisfied himself on this point, a second demand for surrender was sent, but Leisler replied that the fort was not to be delivered on such easy terms, and sent Milborne and De la Noy to capitulate with the governor. Sloughter detained them as prisoners, and ordered the frigate in which he had come to anchor near by so that it could fire on the fort if refusal to surrender should be persisted in.

The next morning Leisler wrote to Sloughter, admitting that the latter was indeed the king's appointee and asking him to send an order through Ingoldesby for the surrender of the fort, and that he (Leisler) might be treated as one who could give an exact account of all his conduct. Ingoldesby was now sent with his companies to demand surrender for the third time, and to order Leisler's men to ground their arms. Many of them obeyed this order, and Leisler, with several of his council, was put under arrest. Bayard and Nicolls were released and took their seats in the council. A new city government was immediately organized for New York. Writs were issued for the election of an assembly, to meet April 9. Throughout the affair the representatives of the crown carefully avoided all acts which would imply that Leisler had any claim to the post or to the power which he had exercised.[1]

In view of the events which had occurred since Ingoldesby's arrival, the plan of a general inquiry by the governor into the disturbances in New York and a report to the king was now put one side. A criminal inquest took their place. After a preliminary examination of the prisoners by Dudley, Van Cortlandt, and Brooke, the governor issued a special commission of oyer and terminer. Joseph Dudley and Thomas Johnson (whom the governor also appointed judges of admiralty), Sir Robert Robinson, ex-governor of Bermuda, William Smith, Recorder Pinhorne, John Lawrence, Captain Jasper Hicks,

[1] N. Y. Col. Docs. III. 765, 767, 794; Doc. Hist. II. 203.

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of the frigate *Archangel;* Major Ingoldesby, John Young, and Isaac Arnold, or any six of them, of whom a judge was to be one, were named in this commission. They all were naturally opposed to Leisler, and were men before whom he and his associates could at least expect no favors. The trial was held before a jury and the case of the government was prepared with special care. The indictment was for holding the king's fort by force against his governor, a course of action which had resulted in loss of life, and amounted to treason and murder. Of the ten prisoners who were brought to trial, two, De la Noy and Edsall, were acquitted; six were convicted by the jury upon evidence; while Leisler and Milborne were condemned as mutes. The reason for this action in the case of the two chief offenders was, that they insisted on the judges determining whether the authority under which they had acted in seizing and holding the fort was legal. They affirmed that this point was still *sub judice*, and until it was decided, they could not plead. The court refused to answer until they had pleaded. The question of course hinged on the interpretation of the king's letter to Nicholson of July 30, 1689, and the judges finally obtained from Sloughter and his council an opinion that the letter was intended for the governor and his council, and not in any sense for Captain Leisler.[1] This the court announced as its decision. But still the two accused men refused to plead. They were brought in guilty with the rest and sentenced to death. The prisoners then petitioned the governor for a reprieve until the king's pleasure could be known, and on the advice of the judges the prayer was granted. Letters were then sent home by Sloughter, in which pardon of all the accused except Leisler and Milborne was recommended. In the ordinary course of affairs proceedings would now have been suspended until orders were received from England.

But in April the assembly met. The feeling against the prisoners which prevailed among its members was strong. Bayard, Van Cortlandt, and their aristocratic friends were again in the saddle. They had been frightened and had

[1] Doc. Hist. II. 206, 207; Colls. N. Y. Hist. Soc. *op. cit.* 364; Brodhead, II. 640.

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suffered great humiliations during the past two years, and their spirit of vindictiveness was correspondingly aroused. The representatives passed resolutions strongly condemning the Leisler régime because of its illegality and oppression, even attributing to it the disaster at Schenectady. The Dutch preachers inveighed against Leisler. It was argued that the king's power of pardon was in the governor. The strongest kind of pressure was brought to bear on Sloughter and his councillors to order the execution of the two leaders of the revolt,[1] even the wives of some of the principal men joining in the outcry. It was to be expected that the councillors would easily be convinced, for many of them had felt the tyranny and all shared in the feeling of exasperation which now swept through the province. The friends of Leisler presented counter appeals. Under such circumstances as these the governor alone could be depended upon to maintain an attitude of impartiality, and to see that the accused in a case of such importance as this were given the chance of a hearing before the privy council. Unlike Berkeley in Virginia, Sloughter had not been a participant in the troubles. Instead of his office and person being assailed, the insurgents in New York had scrupulously guarded him and his dignity from question. In the later stages of the controversy they had pleaded that it was their enemies within the province who were trying to lead them into a false position. In this there was much truth, for the struggle was really between two factions in New York, each of which was trying to outdo the other in professions of loyalty to William and Mary. Surely, if ever, it was incumbent upon an outsider, the appointee of those monarchs, to withstand factional violence, to rise above considerations of mere legality, and to insist that the penalty of treason should not be executed hastily and prematurely. It is possible that the decision of the privy council would have been in accordance with the recommendation of the governor, and that it would have sealed the doom of Leisler and Milborne. But in that case Governor Sloughter could not have been charged with

[1] Doc. Hist. II. 207, 212–215.

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sacrificing human life to a mere clamor and with cancelling a reprieve in order to do it. He, however, weakly yielded to pressure, and his consent was approved by the legislature.

On the morning of May 16, Leisler and Milborne were executed. In their speeches on the scaffold the object of their movement was clearly stated and with it the cause which had led to its perversion. "We had no other[1] [intent] than to maintaine against popery or any Schism or heresy whatever the interest of our Sovereign Lord & Lady that now is & the reformed protestant Churches in those parts. . . ." But during their "unhappy abode in power" they had often longed to see the arrival of a royal governor, that an end might be put to "such distracted orders as then were raging . . . some [of which] we must Confess on our side hath been committed through Ignorance, some through a Jealous fear that disaffected persons would not be true to the present interest of the Crowne of England, some peradventure through misinformation and misconstruction of peoples' intent and meaning, some through rashness by want of Consideration & then through passion, hate & anger." For every such offence they begged pardon, first of God, and then of those whom they had offended, and prayed that in their graves all malice, hatred, and envy might be buried. Had this prayer been heeded, the history of New York during the next decades would have been far other than it was. The flame which Leisler had kindled burned and smouldered long before it was extinguished, and the agitation which it caused forced an examination of the case in England. This was followed by the release of the other condemned prisoners, and in the end by the reversal of the attainders of Leisler and Milborne and the restoration of their estates.

[1] Doc. Hist. II. 214.

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CHAPTER XVI

THE COLLAPSE OF PROPRIETARY GOVERNMENT IN MARYLAND

POLITICAL movements in England, in the seventeenth century, were reflected more accurately by changes in Maryland than by those in any other American colony. This may be attributed to the existence of Catholics, as well as Anglicans and Independents, in that province, and to the fact that its proprietor was a Catholic. The three religious parties which existed in England were thus reproduced in Maryland. It was largely for this reason that the peace of the province was so disturbed during the Civil War and Interregnum. At that time, too, the authority of the proprietor collapsed.

During the two decades and more which followed the Restoration constant effort was made by Charles Calvert to consolidate his power. But he built on a narrow foundation. He followed a pseudo-dynastic policy, and sought by concentrating all the important offices in the hands of his relatives to so establish his authority that it could not be shaken. The profits of power, as well as its exercise, would thus be united in the hands of the proprietor and of those who were closely connected with him. The executive at last would be a unit and would act as one. This policy, together with the fact that by reason of it the higher offices were monopolized by Catholics, goes far to explain protests which both people and lower house aimed at the proprietor after 1670. These protests at times became so emphatic as to create some alarm. They were directed against many features of government and policy. The outline of their history, as reflected mainly in the doings of the lower house, will go far to explain the uprising of 1689.

The constitutional struggle within the colony was continuous for some years after 1676. An assembly was then

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elected [1] which was continued in existence by successive prorogations for several years. When elected it contained four delegates from each county. In 1678 an act was passed which not only continued the property qualification for electors, as prescribed by an act of 1670, but provided that the number of delegates from each county should be four. The law required that in the issue of writs of election English practice should be followed. The two representatives from Saint Mary's, the only city in the province, should be chosen, as heretofore, by the mayor, recorder, aldermen, and common council of that municipality. The proprietor, however, refused to assent to the provision for four representatives, and therefore the number by executive action was limited to two.

The announcement that the proprietor had failed to approve this provision was made in the proclamation by which the assembly was called together in August,[2] 1681. The reason given for a veto was the cost which the payment of four members would impose on their respective counties. Only two members from each county were summoned to the assembly of 1681. This act occasioned some discontent. When the assembly met it became necessary to fill several vacancies in the lower house which had been caused [3] by deaths or by the acceptance of offices which precluded the retention of seats in the assembly. The lower house, in pursuance of English custom, resolved that its speaker should issue warrants for the election of persons to fill these vacancies. In England such writs from the speaker of the Commons were directed to the clerk of the crown, and as no officer corresponding to him existed in Maryland, the lower house requested the proprietor to designate some one to act in that capacity. Calvert, in accordance with established custom in the province, insisted that the secretary was the proper officer to issue the writs, and that it should be done under the proprietor's order. Against this the lower house held out and coupled with it the former

[1] Md. Arch., Ass. 1678–1683, 61, 109. [2] Council, 1671–1681, 378, 408.
[3] Ass. 1678–1683, 114.

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demand that four members should be summoned from each county. The latter claim was soon abandoned by the lower house, but in an act which it drew it insisted that the warrant of election should be issued by the speaker and directed to the secretary. To this the upper house objected. The lower house insisted on it as a privilege. The proprietor denied that such was the practice in Virginia or in any of the other colonies, and added that the king might dispose of his conquests as he pleased without being bound by the precedents of parliament. But in the same sentence he appealed to English precedent to justify the limitation of the number of representatives from each county to two. These are good illustrations of the way in which both colonists and officials played fast and loose with English law and custom. They show at the same time the strong influence which in a general way it had over them both.

In its reply the lower house insisted that it should draw its rights and privileges from England rather than from the "imperfect proceedings" of other colonies. English rules were by the words of the royal charter their birthright, though they were born in Maryland. They took it "heavily" that the proprietor likened them to a conquered people, and wondered that the upper house should have let such an expression pass. If the word meant that they were subject to arbitrary laws and impositions, they would believe that it was not his lordship's own expression, but the result of strange, if not evil, counsel.

To this the upper house replied that many of the customs and privileges of parliament were not convenient or practicable for the colonies, though they did not show that the one in dispute fell under this class. They did not insist that the practice of other colonies should serve as precedents, but simply that some of them had borrowed more wisely from English custom than the lower house was proposing to do. They deprecated all thought that the proprietor had governed Maryland, or intended to govern it, according to arbitrary principles.

After a somewhat prolonged correspondence over formalities, the lower house, at the instance of the upper house,

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agreed that the writs for filling the vacancies should be issued by the proprietor. During the existing assembly four members should continue to sit for each of the counties, but after its dissolution the number should be reduced to two. The question was set at rest by the issue of a proclamation, on September 6, 1681, embodying this agreement and prescribing that the writs should issue from the chancery.[1]

John Coode was at this time a member of the lower house. As soon as the session began the proprietor and upper house insisted that he had no right to sit there because he was accused of seditious speeches, breaches of the peace, and an attempt to subvert the government, and had not purged himself of these charges. The lower house diligently searched the records which bore on the subject, and after the controversy over the issue of writs of election had ended, reported in a message to the upper house. They correctly stated that, so far as they could ascertain, only felony, treason, and refusal to give security for breach of the peace could divest a member of the right to sit in the house. Simple breach of the peace, much less a charge that such an offence had been committed, would not be sufficient.[2]

In this claim the lower house was going too far, for it was never the intention of the English law to protect crime in any form. The upper house now charged Coode with having conducted himself so "debauchedly and profanely"[3] in the court of Saint Mary's county that "the said court made an Order that he should find Sureties for the Peace . . . which Order the said Coode, Contemptuously tore and Disobeyed." For that offence Coode had been required to answer before the justices at the next session of the provincial court, and because of it he had already been removed from the commission of the peace. Coode also had long been uttering seditious speeches and threatening to raise a

[1] Md. Arch., Ass., 1678–1683, 123–134; Council, 1681–1686, 16.

[2] Md. Arch., Ass., 1678–1683, 112, 115, 135.

[3] The scurrilous language which Coode had used was quoted in a communication from the upper to the lower house. Md. Arch., Ass., 1678–1683, 136–139.

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large force for the subversion of the government. For this also he was bound over to appear before the provincial court. But notwithstanding these evidences of Coode's guilt, the lower house continued firm, and Coode retained his seat.

In view of the expected absence of the proprietor from the province the lower house introduced a bill for the confirmation of the laws. By this measure it was proposed that after an act which had passed the houses had been assented to by the proprietor it could be repealed only with the consent of the two houses; also that in the absence of the proprietor the assent given by the governor to a bill should be binding on the proprietor. The upper house rightly considered the first provision useless, because the consent of the houses was already necessary to the repeal of a law which the proprietor had approved. The second provision they declared to be inconsistent with practice alike in Ireland and the colonies, and dangerous to the rights of the proprietor. They also cited the fact that neither the governor of Virginia — a typical royal province — nor of Pennsylvania — a proprietary province in which a greater than the usual degree of self government existed — had such authority. The lower house replied that its immediate object in the first proposition was to secure the laws made at the last session — that of 1678 — from repeal. It desired that they might stand unless repealed with the assent of the two houses. In this it is possible that the lower house may have referred to the election law and the extent to which its provisions had already been changed. Referring to the second proposition, the lower house denied that the precedents named were binding on Maryland, and also that the bestowment of the proposed power on the governor would be dangerous to the proprietor. In their first contention they were doubtless correct, but had the practice of the other colonies told in their favor, they would doubtless have cited it as readily as did the council in this case. The bestowment of such authority on the governor as was suggested would certainly have cut off one very important line of connection between the proprietor and the province during his absences. For these reasons it is not strange that the upper house de-

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clined to further the proposition. After some delay, however, and as the result of a special appeal to the proprietor, a promise was obtained from him that during[1] his absence his assent or dissent should not be delayed beyond eighteen months.

Upon a bill for the regulation of the militia some discussion arose between the two houses. A bill for the relief of Quakers from taking oaths which was passed by the lower house was defeated in the upper house through the influence of the proprietor. A bill of the same origin to relieve ships built in the province from the payment of port dues met with a similar fate. The jurisdiction[2] of the county courts was also extended, an act which was welcomed by the people who lived at some distance from the seat of the provincial government. With this the business of a session was concluded which had been distinguished by an unusual amount of debate between the two houses.

During a brief session in November, with the cordial cooperation of the two houses, an act was passed reviving the temporary laws of the province. Among these was the act against divulgers of false news. A bill for the establishment of a land office was rejected by the proprietor and that office was established by ordinance. The session of April and May, 1682, was chiefly occupied with Indian affairs and with legislation affecting the tobacco industry. The former was the result of the raids of the northern Indians, and the latter of the low price of tobacco occasioned by overproduction. Efforts were made to introduce other staple products and also to facilitate export, and trade generally, by the establishment of port towns. Over these questions no conflict or controversy at that time occurred. But at the close of the session the proprietor issued a declaration vindicating himself against certain evil and false reports concerning himself which had been circulated by disaffected persons.[3] With this the assembly, which had been in existence since 1676, came to an end.

[1] Md. Arch., Ass., 1678–1683, 152, 161, 178.
[2] *Ibid.* 175, 179, 188, 184; 144, 145, 201.
[3] *Ibid.* 314.

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An election was now held and a new assembly met in October, 1682. In obedience to the writs only two members were returned from each county. In his speech at the opening of the assembly the proprietor defended his course in the matter as in agreement with the rights which he undoubtedly possessed under the charter. Because of the reduction in expense which it involved, he also considered it a beneficial measure. The lower house, however, asked that the suffrage be again extended to all freemen, as it had been originally, and that in the future writs be issued to two, three, or four representatives from each county, as the freemen should prefer. The request was denied by the proprietor, and a bill providing for the change which was passed by the lower house received no attention from the upper[1] house. The lower house then voted that the expenses of the upper house should not be paid out of the public levy,[2] because it was not a representative body. The act for the establishment of towns, a measure in which the proprietor was much interested and on which much time was spent, also failed of passage in the lower house. This measure, in the view of the proprietor, was an important one because it would facilitate the regulation of the tobacco trade and the collection of revenue from it. It was opposed by the planters because it would compel them to abandon the private wharves on their own plantations and to carry their products to the towns for shipment. The proprietor also claimed the right to determine the location of the towns.

Because of the urgency of the proprietor that a measure for the establishment of towns should be passed, the legislature was called together again in October, 1683. Since the last session one of the members of the lower house had been appointed sheriff. The house protested against his sitting, and after some difficulty about the issue of the writ, procured the election of another in his place.[3] Immediately the lower house began again to urge its demands that by law, instead of ordinance, suffrage should extend to freemen, and elections in general should be regulated.[4] A bill on the subject

[1] Md. Arch., Ass., 334, 346, 354, 355. [2] *Ibid.* 373. [3] *Ibid.* 527 *et seq.*
[4] *Ibid.* 452, 463, 488, 492, 494; Sparks, *op. cit.* 90.

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was introduced and sent to the upper house, but it was rejected. That house, on its part, sent down a bill for the establishment of towns and the regulation of the tobacco trade, to which the colonies were generally opposed. Over these measures a long struggle followed. The upper house passed a bill to regulate elections, which in turn was rejected by the lower house. The proprietor addressed both on the urgency for the passage of the bill concerning towns, and complained that the lower house was trying to limit his prerogatives. This intention that body disclaimed, but urged its desire that elections of burgesses might be regulated by law instead of ordinance. On the strength of a promise of the upper house that it would petition the proprietor for his assent to the elections bill, if the lower house would pass the bill for towns, the latter, after a speech by the proprietor, was allowed to go through and become law. But the upper house failed to keep its promise, and the bill concerning elections never reached the hands of the proprietor.[1]

In the discussion of the bill relating to towns the lower house sought to secure the right to fix their location, but that being a power given to the proprietor by charter, he had no thought of surrendering it. But the lower house secured the insertion of a clause providing that the new towns should not elect representatives until they had inhabitants enough to pay their wages and the cost of their election. The act remained to a large extent a dead letter, because it was not in harmony with the immediate interests of the planters and was too elaborate for the needs of the province. It was during this session that the revenue from the duty of 2*s*. per hogshead on tobacco was settled on Benedict Calvert, the son of the proprietor, for life.

The last session of the assembly before the return of Charles Calvert to England was held in April, 1684. The houses were largely occupied with the amendment and confirmation of the laws, a form of business which recurred at every session. The perpetual laws were also reviewed and amended where they seemed to need it.[2] The work was

[1] Md. Arch., Ass., 1678–1683, 505, 513, 597.

[2] *Ibid.* 1684–1692, 10–19, 24, 31, 56–67, 69–73, 76–80.

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done chiefly by a joint committee of the houses. Because of the need of haste, however, the proprietor, when the bills relating to the perpetual laws came before the upper house, objected to clauses in three of them. In the case of the judicature act he considered it not safe, without the consent of the governor and the judges of the provincial court, to rely exclusively on the laws of England when the laws of the province were silent. The laws of England should be followed only when the governor and his justices found them consistent with conditions in the province. To provisions in the act for the punishment of offences he objected. He also wholly rejected a bill relating to the levy of war and defraying its charges, saying that the act which it was intended to revive had been suspended and would perhaps remain so during his life. When the need arose he would call an assembly to provide for the expense. As to his promise — made in 1681 and already referred to — that during his absence he would not delay action beyond eighteen months in the case of laws which were presented to him, the proprietor admitted that he was still bound, but[1] he would not undertake to bind his heirs even to this limitation. For some reason — probably the opposition of the proprietor — none of the bills relating to permanent laws were enacted.

From this account it appears that the relations between Charles Calvert and his assemblies had certainly not been friendly. He himself, though professing kindly intentions, jealously guarded his prerogative and sought by skilful, calculating management to extend it. The upper house, consisting as it did chiefly of his relatives and dependents, echoed the proprietor's opinions and in its numerous controversies with the lower house served as his mouthpiece. The restriction of membership in the lower house made it easier to influence or coerce it into submission when it was called before the proprietor in the upper house. Shortly before he left the province the land office was created, and it furnished new places for his relatives. His methods of government were dynastic, and chiefly upon that narrow basis

[1] Md. Arch., Ass., 1684–1692, III. 40.

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his control over the province rested. Though the great majority of the inhabitants were Protestants, the important offices were in all, or nearly all, cases held by Catholics. Thus in regard to office-holding a condition already existed in Maryland which James II was soon to attempt to bring about in England. Had Lord Baltimore remained in his province the crisis which was approaching in England might have passed without any reflex agitation in Maryland. But that the intensified Protestant spirit which now manifested itself in the mother country would long have permitted the continuance of a government of Maryland in the hands of a Catholic proprietor is not probable. In 1684, however, Calvert was compelled to visit England in order to defend his colonies in the boundary controversy with William Penn, and, as events proved, he was destined never to return to America. His prolonged absence weakened at its very centre the governmental machine which he had carefully constructed in the province, and left the ground comparatively free for the movements of his opponents. The government was left in charge of his council, with the title of deputy governors. In the fall of 1688 one William Joseph[1] arrived from England under special appointment from the proprietor to act as president of the council and of the provincial court. Of his previous career we know nothing; but he had impressed Baltimore with a special fitness for the place which, when installed in office, he wholly failed to make good.

In England Baltimore was occupied before the plantation boards with his boundary suit, while he, as well as Penn, had to face the danger to their proprietary rights which was involved in the policy of consolidation to which James II had committed himself. In 1686 *quo warranto* proceedings against the Maryland charter were suggested, but it was not until the spring of the following year that the drawing and execution of the writ was ordered.[2] But even then such

[1] Md. Arch., Council, 1688–1693, 42; Steiner, The Protestant Revolution in Maryland, in Reports of Am. Hist. Assoc., 1897. To this monograph as well as to Sparks, Causes of the Maryland Revolution of 1689, in J. H. U. Studies, XIV., I am indebted for careful and suggestive treatment of the original sources.

[2] *Ibid.* 1667–1688, 456, 542, 545.

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delays ensued that James was overtaken by the catastrophe of the revolution before the case had been brought to trial. As the serving of the writ upon Baltimore and the bringing of the case to an issue would have been perfectly easy, when we compare the treatment of this proprietor with that which with much effort was visited upon the New England colonies the inference is strong that Baltimore's religion stood him in good stead with the last Stuart.

The views of Baltimore concerning government, as well as his diplomatic tact, were also brought into good service to promote his cause. It is at this time and in this connection that we meet with some of the strongest expressions of loyalty to the royal family and to its *jure divino* theories of government which appear in the entire course of colonial history. One of the occasions on which this appeared was the birth of the heir to the throne, June 10, 1688. Lord Baltimore transmitted to the province the order of the privy council that this event, which of course it was hoped would result in the establishment of Catholicism in the realm and dominions, should be solemnly celebrated in Maryland. The deputy governors confirmed this act by specifying the date for that observance in the different counties, and when the assembly met in November, on the initiation of these same governors who were organized as the upper house, the date of June 10 was by statute set apart as a day of perpetual thanksgiving for the event.[1] This act was passed without apparent opposition at the time, though the precedure was without parallel in other colonies.

Another manifestation of the same spirit appears in connection with the advent of William Joseph as president of Maryland and the consequent discussion of the oath of fidelity in the same legislature of 1688. Since the departure of the proprietor a general calm had prevailed in the province. The assembly had met in 1686, but of its proceedings we have no knowledge except what may be reached by inference from the few unimportant acts which it passed. After the

[1] Md. Arch., Council, 1688–1693, 40, 41, 44, 58–60; Ass. 1684–1692, 184, 185, 210.

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arrival of President Joseph, in 1688, came an order from the privy council, transmitted through the proprietor, that the assembly should be called together to pass an act prohibiting the exportation of tobacco in bulk.[1] The act itself, because of opposition both in Maryland and in Virginia, was not passed, and the interest of the session centres about quite different issues.

President Joseph, in his opening speech, enlarged in the spirit of a mediæval ecclesiastic on the transmission of political power from God through the king and proprietor to the representatives of the people of the province who were there gathered before him.[2] This he made the basis of a long exhortation to the assembly to pass laws for the observance of the Sabbath and the suppression of various forms of immorality. He closed his speech with the express demand that each of the members should take the oath of fidelity to the proprietor. It is impossible to suppose that this address was directly inspired by Baltimore, though its fundamental ideas were probably in harmony with the proprietor's views of the origin of his authority. The Catholic members of the council, and Baltimore himself, were aware that their hold on office was precarious, and that they were likely to need all the support which an appeal to loyalty could elicit in the province. The appeal was now made in the form of a demand for the recognition of the heir to the throne and for the taking of the oath, and it was prefaced by the ultra-monarchical sermonizing of President Joseph.

As this was not a newly elected assembly, its members had already taken the oath of fidelity. Therefore the lower house refused to repeat the ceremony, though the four members of the council took the oath as required. As the councillors supported the demands of the president, a controversy immediately arose between the two houses.[3] The upper house, or council, insisted that the oath should be taken whenever the governor appointed. The lower house, among whose members were Jowles, Coode, and Cheseldyne,

[1] Council Proc., 1688–1693, 45; Ass. Proc., 1684–1692, 151, 168, 198.
[2] *Ibid.* 147 *et seq.* [3] *Ibid.* 154–163; Council Proc., 1688–1693, 62.

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who were soon to be leaders of a revolt against the proprietor, refused under the circumstances to take the oath unless statutory authority for the act could be found. The upper house thereupon refused to proceed to business, and in a conference of the houses President Joseph lectured them on the obligation, telling them that in the province the oath of fidelity was the equivalent of the oath of allegiance in the kingdom, and that by the laws of England the oath of allegiance might be proposed to the House of Commons when in session and members who should refuse to take it were liable to expulsion. The refusal to take it, he added, was a form of rebellion, and in Maryland the offence might be visited with fine, imprisonment, or banishment. So irritated was the lower house by this utterance, that they filed a protest against the conduct of the president and the council as unjust and troublesome. As to the oath taken by the Commons in England, it had never been administered to them, while the oaths of allegiance and fidelity, though unlike, they were always ready to take as prescribed by law. Rebellion, they continued, ought not to be mentioned in a message from one house to the other unless it was accompanied by an impeachment of the guilty parties. They claimed the benefit of the laws of England, and of these only, and insisted that their requirements had been satisfied. It was now evident that by raising this somewhat artificial issue the president and councillors were imperilling the business of the session and were in danger of causing a breach between the two houses which could not easily be closed. But the worst results were avoided by a compromise. The members of the lower house had never expressed themselves as opposed to taking the oath individually. Therefore, on the proposal of the upper house, the legislature was prorogued for two days, during which time the oath was administered to the assemblymen. Then the session was resumed and the customary amount of legislative work was done.

As was customary, a committee of grievances was appointed by the lower house. The list of complaints[1] which it pre-

[1] Ass. Proc., 1684–1692, 171.

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sented related to fees, to the form in which payment of the export duty on tobacco should be made, to the need of naval officers, to the arrest of parties without cause being shown, and to a few other minor infringements by the executive of what was considered fair dealing. The government was not charged with any high crimes or serious violations of popular liberty. To such complaints as were made the upper house promised due attention, to be followed by their redress. Early in December the assembly was prorogued to the following April, and the council reported to the proprietor that "all things are peaceable and quiet," and they were perplexed only by rumors of stirring events in England.[1]

In fact by the time the session of the assembly closed, William of Orange had already effected his landing in England, the army had gone over to his cause and the time had almost come when James II must seek safety in flight. The plan of restoring the old religion and founding a Catholic dynasty in England had already fallen into ruin. It would no longer be necessary for Charles Calvert to show cause why, under the *quo warranto* which was preparing against him, his grant should not be restored to the crown. But he must now face a danger which menaced, not simply his personal rule in Maryland, but such dominance of his faith there as, through the furtive exercise of patronage, he had sought to secure. When, in February, 1689, the Revolution had been effected in England, Lord Baltimore was ordered by the privy council to have William and Mary proclaimed in his province, and to have the new oaths of allegiance and supremacy duly administered there. A week later, on February 27, he sent the necessary papers to the council in Maryland, with an order to have the monarchs proclaimed. But the messenger died at Plymouth,[2] and it was not until the following September that, under renewed orders from the home government, proclamation was sent which actually reached the province. As it was, whether or not it was in any measure due to Lord Baltimore's neglect, the news of the revolution reached Maryland after much delay

[1] Council Proc., 1688–1693, 65. [2] *Ibid.* 67–69, 112.

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and through other than official channels. With it came also the report that war would follow, or was already declared, with France. This would result in hostilities with Canada and would bring the Indian question again prominently to the front. In fact the activity of the Indians had already begun in the north. Owing to the lack of official information in Maryland respecting the attitude which the proprietor and his deputies were going to assume toward these events, the way was left open for the circulation by his enemies of sinister rumors and their wide acceptance by the Protestant part of the population. As the event proved, Lord Baltimore's carelessness, if such there was, about the fate of his messenger was most unfortunate for his cause. Perhaps, in any case, he had nothing to expect; but the least that he could have done was to quiet the fears of his colonists at the earliest moment as to his attitude toward the exiled monarch and the French.

The earliest manifestation of the feeling of uncertainty in Maryland was an Indian panic, which bore a relation to the later revolt analogous to that sustained by the anti-Catholic frenzy to the revolution in England. About the middle of March, 1689, the cry was raised that certain of the Catholic leaders, notably Henry Darnall and Edward Pye, both members of the council, were about to coöperate with the Indians in a general attack on the province, the object of which would be plunder and the massacre of the Protestant population. The most prominent centre whence the rumor first came was Stafford county, in Virginia, where its beginnings were later traced, in part at least, to a runaway[1] Indian. On March 24 Henry Jowles wrote[2] from Patuxent to William Digges, a member of the council, that the region where he dwelt was in great uproar because of reports that Darnall had hired the Indians to attack the English. The only evidence, however, to which he could refer was the statements of some drunken Indians, the purport of which they contradicted when sober. But with this were combined the reports which came from Virginia, and the recollections of earlier raids by the Iroquois from the north and of occasional

[1] Md. Arch., Council, 1688–1693, 77, 82, 91.
[2] Arch., Council, 1688–1693, 70.

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outrages by the Maryland Indians, all for the moment indicating to many minds a serious danger. It was said that numbers of Indians ranging from three thousand to ten thousand had gathered on the border. Charles and Calvert counties were especially disturbed. Settlers in large numbers flocked in from the outlying farms. The anxiety spread to Ann Arundel county and to all the settlements which by location were exposed.

Jowles afterward became a leader of the uprising against Lord Baltimore, though nothing appears in the records which connects him with earlier opposition movements. The proprietary party later charged him with conspiring to invent the rumor to which he now helped to give circulation. His letters, written at the time, indicate that he believed in the substantial truth of the reports, notwithstanding the flimsy character of the evidence upon which they rested. He, however, did not express belief in the guilt of Darnall and Pye, and declared that he would obey them if they showed themselves ready to defend the country. He wrote to Digges as apparently the one member of the council whom he could trust. But he did not stop there. As colonel and a justice of the peace of Calvert county, Jowles ordered Major Beale to go with a part of his company to the alleged gathering place of the Indians and learn the facts. The rest of the militia of the county was ordered to hold itself in readiness. Jowles wrote also directly to the council, asking that they would send arms and ammunition to the imperilled district and commission some one to raise men for defence.

To this letter the council replied, stating that they had sent the arms and ammunition in the care of Digges, expressing their confidence in Jowles and their full resolution to stand by him and the English people of the province, and ordering him, by virtue of his commission as colonel, to punish the Indians and their supporters if found in hostile array. With this letter went Darnall himself, with instruction to inquire into the situation and to proceed against the foe, if he should find one, as in his discretion he should think best. To Major Beale, who was already scouting

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among the border settlements, the council wrote the next day that Darnall had gone "to Justify his Innocency from that base and scandalous expression that is cast upon him by exposing his life and his fortunes in the defence of the people and their Interests. . . ." Papists as well as others, if found in arms, would be proceeded against as enemies. This statement, opposed as it is by no evidence or probability to the contrary, must be taken as effectually disposing of the charge that the Catholics of Maryland were in a league with the savages to destroy their Protestant neighbors.

Darnall found the statements of Jowles respecting the excitement at Patuxent to be true. Help had even been sought from Virginia, and the arrival of a force from that quarter, it was expected, would add to the excitement. But he, with Digges, set about allaying the fears of the people. The call for help from Virginia was countermanded. The magistrates from Virginia themselves aided in discountenancing the rumors. Jowles, Richard Smith, Jr., Digges, Kenelm Cheseldyne, and twelve others joined in a public written statement to the effect that, after "Exact scrutiny and Examination into all circumstances of this pretended design," they had proved it to be nothing but a "slevelesse fear and imagination fomented by the artifice of some ill minded persons. . . ." Edward Pye, who with Darnall was the other chief object of the first charge, sought out the Indians of the neighborhood and obtained from them a statement fully exonerating[1] him. This was confirmed by a formal expression of confidence from his neighbors. From other points also came similar assurances of safety, and they were all used by the council to so allay the excitement that by the beginning of April it had passed away. If it really involved a plot to overthrow the government of the Catholic proprietary, this also for the time had failed. But the event, especially when compared with contemporaneous occurrences in New England and New York, shows how easy at that time it was to associate in the popular mind the idea of Catholic conspiracy and Indian massacre. The latter was

[1] Arch., Council, 1688–1693, 81, 86, 88.

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in Maryland a rather remote possibility, but the former bugbear was purely a reflection of fears which had their origin in European conditions, and those too which, even there, were steadily passing away.

The proprietary rule in Maryland in recent years had not been oppressive or destructive of such liberties as English colonists in the seventeenth century commonly enjoyed. Charges against it which run to that effect are gross exaggerations. But at the same time it was a government toward which English Protestants could not feel any great degree of loyalty. Besides being a proprietary system, it was dominated by the spirit of clique and family influence. By various petty arts, well known under the Stuart régime in England, the proprietor and his officials had long sought to strengthen and perpetuate their power. These had occasioned some dissatisfaction, which from time to time found utterance in protests from the assembly. With the accession of James to the English throne and the arrival of William Joseph, the Catholic element in the system received increased emphasis through the persistent efforts which were made to secure the recognition of the Stuart heir. In the interest of the proprietor a strong appeal was at the same time made to the spirit of loyalty. But a government in the hands of Catholics was quite as much an anomaly in the colonies as it had become in England. Joseph, the proprietor's agent, did nothing in any way to strengthen or recommend it. It was therefore scarcely possible that Catholic rule in Maryland could survive the failure of James's experiment in England. This was the controlling fact of the situation. If Baltimore's rule had not fallen before an uprising of the inhabitants of Maryland, it must have yielded to action on the part of the home government; in fact it fell before assault from the two centres, and it is not necessary to seek instances of misgovernment on the one side or the existence of a spirit of anarchy or disloyalty on the other in order to explain the event. As is generally the case, the explanations which after the event were given of its origin by participants were partial or misleading, and at best only suggest the real causes.

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After the Indian panic of March had subsided about four months of quiet followed. Before the end of April the accession of William and Mary had been proclaimed in Virginia, but no official word concerning the event reached Maryland. As the time passed people began to be anxious and to suspect that orders for the proclamation had come, but that they had been suppressed by Joseph and his fellow councillors. About the middle of June we are[1] told that some had almost resolved to proclaim their majesties without the order of the government. It seems strange that during all this time the president and council gave no sign, that they did not even attempt to deny the charge which was circulating against them.

Finally, about the middle of July, Henry Darnall was informed that John Coode was raising men in the settlements along the Potomac. A messenger who was sent by the council to ascertain the facts was seized by Coode as a spy.[2] Two days later the council learned that Coode had also been joined by men from Charles and Saint Mary's counties and that the combined force was marching toward the town of Saint Mary's. Colonel Digges, the Protestant member of the council, instead of joining the insurgents, took the lead in defending the existing government. With about one hundred men he took possession of the state house. But on the approach of Coode and Major Campbell with a much larger force, his men refused to fight, and Digges had to surrender. The public records and seat of government thus passed without a struggle into the hands of Coode.

Sewall and Darnall now went up the Patuxent river to raise men. Most of the officers they found ready to support them, but the people were persuaded that Coode was their protector against Indians and papists and that he was the true exponent of loyalty. The council then offered the command of their force, such as it might be, to Jowles, though he was known to be an insurgent leader. Jowles disdained the offer. Then the council issued a proclamation

[1] Council Proc., 1688–1693, 112. See also, for intimations of stirrings before July, *ibid.* 116, 119.

[2] *Ibid.* 156.

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of pardon to those who had taken up arms against them on condition that they would return to their homes. This paralleled the weakness which the proprietary officials had shown during the period of the Commonwealth, and it proved to be quite as useless.

Lord Baltimore's residence, now occupied by Sewall, his stepson, where at this stage of the crisis Joseph and the proprietary leaders had taken refuge, was at Mattapony, eight miles from Saint Mary's. Thither Coode and his followers marched from the capital, taking with them two small cannon from an English merchant ship which lay in port. When they reached the house, Coode, through a trumpeter, demanded its surrender. In return a request was sent to him for a parley, this being done in the belief that the councillors would be able to clear themselves from blame. But the time for that had passed. No alternative to surrender was offered.[1] Its terms, however, were liberal — safe-conduct of the members of the proprietary party to their homes, guaranty of their just rights, with the sole requirement that all papists should be excluded from office.[2] These terms were accepted and Maryland again passed under Protestant control. Joseph, Sewall, and a few of the other proprietary officials retired to Virginia.

The leaders of this revolt, besides Coode and Campbell, were Jowles, Cheseldyne, Blakiston, Warren, Clouds, and Purling. Cheseldyne had been speaker of the last assembly. To Blakiston, as collector of the royal customs, reference has been made in a previous chapter. Jowles we have already met as justice of the peace and as colonel of the militia. Coode, who was nominally, though not really, the leader of the movement, had formerly been a clergyman, but long since had forsaken his profession for the life of a planter. In earlier years he had been connected with Fendall in opposition to the proprietor, but in no connection had he shown any brilliant or commanding qualities. He seems to have been habituated to the use of violent language, while his views and policies were likely to be as

[1] Council Proc., 1688–1693, 117, 157. [2] *Ibid.* 107, 157.

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extreme as his speech. There is evidence that some time before the outbreak he was concerned in an intrigue for the overthrow of the proprietary government. Jowles had been more prominent, in a non-committal way, in connection with the Indian panic than had any other insurgent leader. Blakiston doubtless shared the feelings which royal officials always entertained toward proprietary government, while Cheseldyne was prominently identified with the opposition in the assembly. Circumstances would indicate that Jowles, Blakiston, and Cheseldyne were the real leaders of the revolt.

The population who supported these men lived chiefly in the southern part of the province, in Saint Mary's, Charles, and Calvert counties. All the leaders came from that region, the larger number of them from Saint Mary's county.[1] And yet the Protestants in all, or nearly all, of the counties rallied sufficiently to the cause to control their local governments. But there was, at least in most parts of the province, a considerable body of Protestants who did not sympathize with the uprising because they thought it unnecessary. They had enjoyed liberty and security under Baltimore's government; they felt that the Catholics, as well as the Protestants, of Maryland would quietly and loyally fall in with any arrangement concerning the disposition of the crown which might be reached in England. They did not believe in the reality of any Catholic plot in Maryland. They regarded Coode as a person of low character and aims and refused to give him their confidence. In all this there was abundant truth, and this component of the population showed a large degree of common sense. It is interesting to note that the stronghold of this sentiment was Anne Arundel county,[2] where in earlier and more revolutionary times had centred the spirit of opposition to the Calverts. When, later, the associators' assembly was called, Anne Arundel county

[1] See the lists in Ass. Recs., 1684–1692, 241 *et seq.* Also the addresses from the counties to the king and queen, Council Proc., 1688–1693, 129 *et seq.*

[2] See its address, Council Proc., 1688–1693, 135. Also the charges of the Coode faction against Richard Hill, Ass. Proc., 1684–1692, 237.

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refused to send representatives. For this decisive act, as well as for earlier expressions of disapproval, Coode and his friends held Richard Hill to a large extent responsible. In a proclamation the assembly denounced him and his supporters as traducers of the insurgent government and traitors to the crown. Hill was later driven out of the province, and escaping through Virginia, went to England, where, with other fugitives, Catholic and Protestant, he presented charges against the party of Coode and affirmed the loyalty of their opponents. Darnall was the chief representative of the Catholics in this enterprise. It speaks well for the government of the Calverts that in the hours of its trial it found so much support among the Protestants of Maryland.[1]

At the beginning of the revolt Coode and his followers issued a declaration giving the reasons for their action.[2] In this paper they went back over all the controversies of the past decade — that relating to the number of representatives from each county, to the exercise of the suspending power by the proprietor, to the oath of fidelity, to the alleged ill usage of royal customs officers by the proprietor. Certain also of the grievances which had been submitted by the committee of the assembly in 1688 were repeated. Reference was made to many acts of gross oppression which were alleged to have been committed in the interest of Catholics, all culminating in intrigues with French and Indians for the destruction of the loyal provincials. With this went the intentional suppression of the royal proclamation. These, taken together, it was charged, proved not only a systematic violation of the charter, but misgovernment of the worst and most oppressive character. It was in order to rescue the province and its inhabitants from this intolerable condition, to defend the Protestants and assert the sovereign rights of the crown, that, according to the declaration, the revolt was undertaken. The same sentiments were expressed in the formal address which the insurgent leaders[3] sent to the king and queen. They were also repeated in great detail in the

[1] The career of Hill may be traced in Council Proc., 1688–1693, 181, 182, 184, 185, 191, 196–198, 208, 213, 225, 229.

[2] *Ibid.* 101.

[3] *Ibid.* 108.

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papers[1] which in 1690 were submitted by Coode and Cheseldyne to the king and council in defence of their course and in answer to petitions of Lord Baltimore, and of Hill, Coursey, and other colonists who had gone to England to support his cause. Each party charged its opponent with being the aggressor. But it is certain that, unless a large body of evidence has been suppressed, or has not yet been brought to light, many of the charges of the Coode faction were exaggerated or baseless. The charter had not been violated, as they claimed; neither had a tyrannical system been maintained. Coode was the aggressor, in that he hastened by violence a change which otherwise would in all likelihood have peacefully come about.

On August 22 there met at Saint Mary's a convention[2] which had just been elected under orders from the insurgent leaders. All the counties were represented except Anne Arundel and Somerset, and representatives from the latter came on the last day of the session and presented excuses. The elections were held on brief notice, and according to accounts which have been preserved of doings in Charles and Talbot counties, opposition there among the people was widespread. By summary procedure what passed for a representation was secured and the convention met. To this body Coode and his councillors nominally surrendered the authority which they had assumed; but they continued to control the assembly, which was packed in their interest. It appointed a committee of secrecy, of which Blakiston and Jowles were members, to report on the charge that the Catholics of Maryland had been intriguing with the French of Canada and the northern Indians. A few days later it reported that the charge was proven and that the meeting of the last assembly had been prevented in order to conceal the wicked design. Letters were then sent to the neighboring colonies stating that the conspiracy had been discovered, that the guilty parties had fled, and that, as William and Mary had now been proclaimed in Maryland, coöperation in

[1] Council Proc., 1688–1693, 211, 213, 215, 225.

[2] Ass. Proc., 1684–1692, 231–247; Council Proc., 1688–1693, 120, 160; Steiner, 307.

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the arrest of the fugitives was solicited. Attention was then directed to the reduction or pacification of Anne Arundel county. Lower taxes than had ever before been imposed were promised. Pardon was promised to the followers of Richard Hill, and it was announced that no arrests were intended unless opposition should be persisted in. No expression of submission on the part of Anne Arundel has been preserved, but it was included in the ordinance for the regulation of the militia and the preservation of the peace in the counties, which the convention issued as its final work. Provision was also made in this ordinance for the appointment of naval officers, for the probate of wills and the administration of justice, together with the enforcement of the existing laws of the province. Coode, Cheseldyne, and their chief associates were also appointed a committee to assess a public levy. Coode had at first proposed a standing council for the province, but this was disapproved, and the convention adjourned without expressly creating or recognizing any authority in Maryland higher than that of the county officers.

This continued to be the status of government until April, 1690. Then the convention met again, though of its proceedings we have no record. We, however, know[1] that it created a committee of twenty members from the counties, and empowered it to send and receive such orders and communications as might be necessary until the assembly should again meet or some other and lawful power should be established. It was as head of this committee, and with a title of commander-in-chief, that Coode carried on the correspondence of the province until, in August, he and Cheseldyne sailed for England. After that time Blakiston and Jowles became the nominal as well as real leaders in Maryland.

In January, 1690, affairs were further complicated by an affray on the Patuxent river which resulted in the death[2] of John Payne, the royal collector of customs for that district. The occasion was this. Nicholas Sewall, who, with President Joseph, John Woodcock, and two Catholic priests, had

[1] Council Proc., 1688–1693, 191, 197, 199, 206; Ass. Proc., 1684–1692, 360.
[2] *Ibid.* 163, 166, 169, 171, 176, 243 *et seq.*

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taken refuge in Virginia, had returned in a vessel to Maryland to visit his family and to procure provisions. Payne, learning of this, came in the night with two boats to seize Sewall's vessel. As Payne was prominently connected with Coode, the claim made by the associators that he was acting solely in his capacity as customs officer cannot be substantiated. Sewall was absent, but his men, probably divining his true purpose, refused to permit Payne to come aboard. Shots were exchanged which resulted in the death of Payne and the wounding of two of Sewall's men. They then fled back into Virginia, where the two wounded men were arrested and warrants were issued for two others. Coode in letters to the Virginia authorities at once represented this as wilful murder committed upon an officer of the king while in the lawful discharge of his duty. The same representation he also made to the home government. Coode therefore demanded from Virginia the surrender of the accused for trial and punishment. But Nathaniel Bacon and the council of Virginia, and afterward Governor Nicholson, were scarcely disposed to recognize the government in Maryland as legal, and refused to deliver them up except under command from the king.

In August, 1689, the home government became aware that the king and queen had not been proclaimed in Maryland. Lord Baltimore was then called before the plantation committee and, after he had explained the reason for the delay, was commanded to send duplicate orders for the proclamation.[1] This he obeyed. As the autumn progressed news of the uprising, with the statements of the convention and the letters of Coode, reached the English authorities. These revealed the fact that the authority of the proprietary had been overthrown and the party in control were offering the government to the king. Baltimore was also informed of events in Maryland by Sayer, Carroll, and other supporters. Darnall reached England, where he was detained as a prisoner, and Mrs. Barbara Smith carried thither the story of the arbitrary arrest of her husband. The addresses and

[1] Council Proc., 1688–1693, 112.

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counter addresses of the counties also arrived in England late in 1689 or early in 1690. In these and other ways the condition of Maryland was forced on the attention of all parties concerned.

Early in January[1] the plantation committee consulted the attorney general for advice concerning Baltimore's charter and what settlement would be best for the king's interest; but as a temporary measure they recommended that a royal letter should be sent to those who were in control in the province, approving of their action and ordering them to preserve the peace and maintain things as they were. Baltimore, however, asked for a hearing and submitted a list of merchants and former residents of Maryland whom he desired to have called. He was put off from day to day until January 11. Then he proposed that those who were in charge of affairs in Maryland should be removed and a Protestant governor and council should be commissioned, who, with the confidence of both parties, should investigate the truth of the statements made by the associators. Coode and his supporters should meantime be granted full amnesty for what had already occurred. Henry Coursey was recommended by Baltimore for the position of governor. No notice seems to have been taken of this proposal, and the royal letter was sent to the associators as suggested by[2] the plantation committee.

In April came the news of the death of Collector Payne; and his brother, who was resident in England, petitioned the committee of trade and plantations that justice might be done to the guilty parties. This petition was passed on[3] to the privy council, with the recommendation that the accused should be brought to speedy trial, either in Virginia or Maryland, according to the locality where the outrage should appear to have been committed. An order was sent accordingly. The impression which Coode sought to make on the minds of officials in England was that this was a repetition of the murder of Rousby, and that both gave proof of the disloyal attitude of the proprietor and his friends to the

[1] Council Proc., 1688–1693, 162, 165. [2] *Ibid.* 167. [3] *Ibid.* 174.

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crown. The refusal of the Virginia authorities to accept Coode at his face value and the evidence that the Protestants of Maryland were by no means a unit in his support doubtless weakened the impression which he made. But the policy of Coode was so clearly in harmony with the interests of the home government, that an event like the death of Payne must add to the hopelessness of Baltimore's case.

In the royal letter to the associators an indication was given of the course which the home government ultimately took. While the associators were ordered to care for the administration of the government, they were told to suffer the proprietor or his agents to collect the revenue which arose in the province and were to take for public uses only that which in the past had been used for that purpose. This implied that the proprietor was to be left at least with his private estate. Encouraged by this, he sent over one James Heath as an agent for the collection of his revenue. Heath, on his arrival, demanded the papers of the office and all other papers which related to his lordship's private estate, the delivery of the house and plantation at Mattapony, and an account of all shipping which had entered and cleared since the suspension of legal[1] government. To these demands, so far as they related to the proprietor's private estate and his moiety of the export duty on tobacco, Heath received a favorable reply; but the associators refused to surrender the house at Mattapony, on the ground that it was fortified, and declared that the remaining customs duties would be collected by the naval officers. Against this Heath protested, and as a result of the dispute which almost necessarily arose, the associators made over to the king's receiver general the entire customs revenue of the province except so much as was necessary to meet the cost of the government. This formed an additional item in Baltimore's later complaints to the English authorities, but it was used without effect.

There is no indication that at any time the English authorities undertook seriously to investigate the justice of Baltimore's case. The oft-quoted opinion of Chief Justice

[1] Council Proc., 1688–1693, 182, 188, 194, 211.

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Holt, which was given early in June, 1690, like the royal letter which had been sent four months earlier, clearly indicates the policy of the government and the result toward which events were drifting. The chief justice declared that it would have been better if the offences of Lord Baltimore, amounting to forfeiture, had been judicially ascertained before the appointment of a royal governor; but, as this had not been done and since it was a case of necessity, the constituting of a governor direct by the king would be legal; but that official must be responsible to the proprietor[1] for the profits.

After some further hesitating action, at the beginning of autumn Attorney General Treby, at the special request of the plantation committee, reported[2] upon the proper draft of a commission to Lionel Copley to be royal governor of Maryland. In this statement the ideas expressed by the party of Coode were reëchoed, to the effect that the only way to save the province from being lost to the enemy was to appoint a governor for its defence and for the care of its revenue. Further delay then followed until the beginning of October, when Lord Baltimore promised to submit for the guidance of the law officers copies of the commissions and instructions which he was in the[3] habit of issuing.

But before further steps were taken Coode and Cheseldyne landed in England. Baltimore at once petitioned that they might be called before the council. This request was granted, and on November 20 they appeared. At subsequent hearings which were attended by counsel the case of each party was presented.[4] Darnall petitioned for release, and his request was granted. The release of Hill was also ordered. But although the arguments to which reference has already been made were heard, no decision which was more conclusive than that to which the king and officials had already come was reached. The lords of trade recommended that a governor be sent to Maryland who should inquire into the situation of affairs and report. Meantime a new commission for Copley was prepared and submitted to Lord Baltimore. He

[1] Council Proc., 1688–1693, 185.
[2] *Ibid.* 204.
[3] *Ibid.* 207.
[4] *Ibid.* 211–236.

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objected to its general principle, namely, that it was intended to take from him the powers of government which had been bestowed in his charter. But the continuance of his territorial rights was conceded, as well as his right to the tonnage duty and to one half the revenue from the export duty on tobacco under the law of 1679. With this, as it was useless for him, a Catholic, to contest the will of the crown, he had to be content.

The commission passed the great seal on June 27, 1691. After some delay a council of eleven was selected, which contained representatives from the Protestant association and from the Puritans of Anne Arundel county, and included among its number two whose names had been proposed by Lord Baltimore.[1] Blakiston and Jowles, but not Coode or Cheseldyne, were among the councillors. Sir Thomas Lawrence, an Englishman, was appointed secretary. The commission and instructions[2] which were issued to Copley, as to form and contents, were based fundamentally on those which had been granted to the governors of Virginia, New York, New Hampshire, and New England before the English Revolution. Some modifications had been necessitated by that event, as the substitution of the oaths required in the Bill of Rights for the former oath of allegiance and the test. Full provision had now to be made for an assembly in each province. In the Maryland instructions also it was necessary to direct the governor to see that the territorial and fiscal rights of the proprietor were fully secured. Special instructions for the encouragement of the Church of England, for protection against the Indians, and for the establishment of ports and harbors were also included. In general the powers and directions were the same as those which, a few months earlier, were given to Governor Sloughter of New York, and which were to characterize all similar documents throughout the eighteenth century. The possibility of a closer connection with Virginia was indicated by the provision that, in case of Copley's death, Governor Nicholson of that province should be lieutenant governor of Maryland, and, in case of the failure of both

[1] Council Proc., 1688–1693, 230 *et seq.*; Steiner, 343.

[2] Md. Arch., Council, 1688–1693, 263, 271.

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these, Sir Edmund Andros should succeed. After a period longer even than the accustomed delays on such occasions, Copley arrived in his province in March, 1692, and royal government was inaugurated. For purposes of government another proprietary province had ceased to exist, and for the next twenty-three years — so long as the Calvert family continued to adhere to the Catholic faith — Maryland occupied a place within the system of royal provinces.

Meantime another session of the convention had been held in Maryland, in April, 1691, and by it a provincial[1] court of justice was created for the trial of those who were charged with the murder of Payne and the hearing of other cases. Those who were directly concerned had now been surrendered by Virginia to Maryland. Of this court Blakiston was made chief justice, while the large majority of its members were selected from the grand committee which conducted the regular executive business of the province. The chief justice and five of the judges were commissioned to try Sewall, Woodcock, and the others who lay under the charge of Payne's murder. After what was represented by the proprietary party as a very partial trial, in which the prisoners were denied their papers and the help of counsel, Woodcock and three others were found guilty of murder. Woodcock was executed. Sewall was not in the custody of the court at the time, and, as he was not present when the alleged murder was committed, was later allowed to return to Maryland, where he escaped further trial.

[1] Md. Arch., Council, 1688–1693, 241–262.

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CONCLUSION

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In the history of England during the seventeenth century the three events of controlling importance were the Puritan Revolution, the Restoration, and the Revolution of 1689. We have seen that their influence was in every case reflected in the development of the colonies. Indeed, the course of that development was to a certain extent conditioned by these great events. The Civil War checked the plans of Laud and his supporters for the enforcement of uniformity in New England and for the organization of that region as a royal province. It gave the colonies twenty years of unusual freedom from constraint. For a time it substituted parliament for the crown as the centre and source of control. But before the lines of that control had been strictly drawn, the Protectorate was established. Over the continental colonies the government of Cromwell never exerted any effective influence. It assumed to act as umpire in the case of the conflicts within Maryland, but events both in that province and in Virginia took essentially their own course under the Protector. His complacent attitude toward New England is notorious. In the West Indies, however, tendencies were then inaugurated which were to have a wide influence on British colonial policy in general.

With the Restoration the tendencies toward strict executive control over the colonies, which appeared under the early Stuarts, were revived. The effort to enforce uniformity, however, was abandoned; but, supported by acts of parliament, the regulation of colonial trade became a leading object of British policy. Dutch government in North America was overthrown, and the supervision of New England affairs was taken vigorously in hand. But now, as heretofore, when new territory was to be settled proprietors were chartered for the purpose. The Carolinas and Pennsylvania were founded as proprietary provinces, while the advisers of the Duke of York carelessly permitted

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the part of his domain between the Hudson and the Delaware to slip from his control. The dealings of the king with Arlington, Culpeper, and others in matters relating to Virginia reveal a persistent disposition on his part to run counter to the prevailing tendency of the time. But the process by which, in the later years of Charles and under his successor, the struggle with Massachusetts, the demands of British commercial policy, and the need of pacifying Virginia led to the recall of charters and to the general triumph of the crown, having as its evident outcome the union of the continental colonies into governor-generalships or vice-royalties, has been sufficiently indicated in the preceding chapters. The unwillingness with which large bodies of the people submitted to the reënforced executive pressure was conspicuously shown in New Hampshire, Massachusetts, and Virginia.

In the midst of his reckless course James II was surprised by the Revolution in England. That movement at once released the forces of opposition which were gathering against his policy and his agents in the colonies. The explosion came first in Massachusetts. The other corporate colonies at once resumed their old forms of government. The uprising repeated itself, though with less definiteness and success, in New York. Proprietary rule struggled back into existence in New Jersey. By these events the dominion of New England was hopelessly wrecked, and assemblies were everywhere restored. By a movement in Maryland which shared most of the characteristics of the general impulse that swept over the colonies, the government of the Catholic proprietor was overthrown and the way was opened for the immediate rule of the crown. The government of William III in England, resting as it did upon a free parliament, was committed to a full recognition of the necessity for assemblies in the colonies, and of their legitimacy as well. So far as the enlarged province of Massachusetts was concerned, this was fully guarantied by charter as never before. New York, too, received an assembly, which henceforth was to continue as a permanent part of her constitution. She was no longer to be the representative and exponent of Stuart

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autocracy among the colonies. She now took her place with the rest under a mixed system of balanced powers, analogous to that which existed in England. Even Connecticut and Rhode Island were not disturbed in the enjoyment of the large degree of autonomy which their original charters insured. The Quaker proprietor received back his powers of government after a brief suspension, and he and his successors were left to fight their legislative battles alone. The same, for approximately a generation to come, was true in the Carolinas. In the "old dominion" the executive abated somewhat its claims, and they never again reached the height which they had attained under Lord Howard of Effingham. CONCLUSION.

This, in a broad and general way, was the reflection within the colonies of the controlling events of the period in the history of England. It reveals, so to speak, the atmosphere within which the colonies were attaining their early growth. It exhibits the natural type to which the colonies belonged. But the nature of the subject and the method of treatment which has been followed are such as to demand a somewhat more intimate and specific consideration of the changes through which the colonies were passing in the seventeenth century and of the system of which they formed a part. Institutionally considered, the controlling fact of the century was that they were founded as chartered colonies and that most of them remained such through all or a greater part of the century. It was emphatically the period of the chartered colonies. That means that the crown had delegated rights of settlement and subordinate rights of government over the colonies and their inhabitants to proprietors, the proprietors using their powers under a variety of forms. The result of this, when taken in connection with their isolation, was that the king's subjects in the colonies were removed several degrees further away from him than were his subjects who resided in the realm. Interposed between the colonists and the crown were the grantees or patentees to whom the charters had been issued, the mesne lords in the quasi-feudal relation to which natural conditions had given rise when the colonies

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were founded. Such mesne lords no longer existed in Great Britain; there the relation between the subject and the crown or parliament was direct. The dealings of the government were with individuals. But in the case of the colonies in the seventeenth century the British government dealt far more with jurisdictions and their officials than with individuals; with assemblies or general courts, with proprietors, with governors, and other magistrates. The individual colonist was reached chiefly through the government of his colony or jurisdiction. The crown issued orders or instructions to the governing bodies of the chartered colonies and with these it carried on correspondence. The obedience which was sought was that of the colony at large and as a whole. For the securing of this result it was necessary to rely on the loyalty and fidelity of the assembly and officials within the colony, and it was possible for them to hamper the royal executive at every step. The application of imperial control to a corporate colony differed to an extent from its application to a proprietor or board of proprietors, but in essence the process was the same. It was external and mediate, a control over the jurisdiction as a whole rather than directly over the individuals who inhabited it.

As in the development of feudal relations during the middle age, this was not the result of intention or conscious planning. The remoteness of the colonies from England, their geographical isolation, was a fundamental element in the origin of the system. This cause also greatly helped to perpetuate it and to make clear and distinct its operation. Because of their remoteness, the colonies naturally transacted most of their business within themselves and according to their own methods. These were more or less perfectly adapted to the condition and environment of the colonists. Only a few of their most weighty affairs — those which were of imperial moment — in that period found their way before the administrative bodies in London, or would have been of interest either to them or to parliament. It is true that the privy council and other administrative boards and officials in England existed for the colonies as well as for the realm,

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and that their functions as applied to the two were legally the same. By introducing into its statutes references to the dominions parliament also might legislate for the colonies to any extent it chose. But, owing to distance, to imperfect means of communication, and to the infant condition of the colonies, the home government at first found little to administer and still less concerning which it was inclined to legislate.

The English, moreover, had not inherited the systematic methods of Rome. Even within the realm itself a highly centralized administrative system did not exist. A comparison of early English colonial administration with that of Spain or France would show how far short, in reach and comprehensiveness, it came of that attempted by the Romanic nations. In the seventeenth century, so far as the continental colonies were concerned, the home government directly undertook very little in the great departments of justice, finance, and military affairs. Outside of Virginia almost nothing was attempted, or indeed was possible, until after the Restoration. But even then the efforts of the crown were chiefly directed toward the removal of the obstacles which had been set up by the grant of charters and the founding of chartered colonies. For some time after the Restoration its activities bore some resemblance to those of an umpire or referee in controversies between the various colonies and their opponents or critics, whether in America or England. Positive action rarely went farther than hearings, followed by the issue of commands that due obedience should be rendered and justice done. In some very important cases these commands were ignored; in most cases they met with only a reluctant and partial obedience. In the chartered colonies the crown had no authority to remove or otherwise punish officials for neglect or disobedience. It was therefore practically powerless. There is little, even in the history of Virginia during the period, to convince one that the measures of the home government caused any direct or important changes in its development. The futility of efforts of the crown to diversify industry, even when supported by the officials of the province and its assembly,

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sufficiently illustrate this fact. The inability of the province, though acting under instructions from home, to overcome the natural obstacles to defence still further demonstrates the same truth.

So slight were the dealings of the crown with the other colonies, that its relations with New England really give character to the imperial administration until after 1680. The nature of these relations has already received abundant illustration, not only in the present volume, but in the earlier analysis of the corporate colony. In most essential particulars, though of course not in theory and law, they were those of the modern self-governing colonies. The relations, however, were in a sense furtively assumed by the colonies, and the crown had no thought of acknowledging them as permanent or fully legal. Unlike the modern colonies, therefore, the spirit of the governing class within New England was, as a rule, one of suspicion and jealous watchfulness toward the home government. They were ever on the alert to prevent encroachment on their liberties, and Massachusetts did not hesitate to thwart and nullify the commands of the home government. As has already been stated, these colonies, as a group, assumed a semi-diplomatic attitude and one of passive resistance toward the British government. The need of judicial, fiscal, military, ecclesiastical, or legislative subordination to England they either did not recognize or distinctly repudiated. Under conditions such as these hearings and expostulations on the part of the home government were about all that was possible. Owing to the remoteness of New England the effort to revoke the charter of Massachusetts in 1635 had failed, and a full half-century elapsed before the English government reached the point where that effort could be successfully repeated.

From long-continued relations such as these it is easy to see how a constitution of the empire was developing which was very different from that of the realm. Even though the English government was not highly centralized and bureaucratic, like that of the continental states, its authority was continuously felt in all parts of the realm and in all lines of political activity. No limit was set to the sphere of

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parliamentary legislation. That body represented the entire realm and no special reference to the kingdom of England was needed in order to establish the binding force of its statutes. Neither in borough or county did any assembly exist which considered its authority over local taxation so great as to exclude that of parliament; or which issued local regulations that ranked in scope or importance with the acts of the colonial assemblies. The fact that parliament mentioned the dominions in the statutes which were intended to bind them shows that it was conscious of a difference between them and the realm. They stood apart and were subject to special treatment. It was understood that by no means the entire body of English statute law extended to them. Of the acts that were passed before the settlement of the colonies, only those which were adapted to the condition of the colonists were enforced there. In many cases the fact that laws were of this character was indicated by their tacit or express adoption by colonial authority; and such acts were not necessarily in force in the colonies at large, but only in those where they were expressly adopted. Parliament passed no statutes which vitally affected the colonies until after the middle of the seventeenth century. Its colonial legislation during the entire period under review was limited to half a dozen acts which related to the subject of trade, one of which provided for the levy of a duty on exports from the colonies. The principles of the Elizabethan and early Stuart legislation concerning Roman Catholics were also generally accepted as in force in all the colonies except Maryland. If we except what was done during the revolutionary conditions of the Commonwealth, parliament remained virtually silent upon all other subjects relating to the colonies. That it might have legislated as comprehensively and as much in detail for the colonies as for the realm is in the abstract undoubtedly true. Its efforts in this direction might have been so complete as to have rendered colonial assemblies unnecessary. But it did not do this, and it never thought of even attempting it. Under the conditions which then existed it was a practical impossibility, and the statement that the opposite course was possible is a conclusion

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from a doctrine of parliamentary supremacy which, so far as the colonies in the seventeenth century were concerned, was ideal. And yet no authoritative declaration was made either as to the extent or the limits of the authority of parliament; as to the relative rank of jurisdictions inside and outside the realm; as to the identity or disparity of the realm and the dominions. But such a course was in harmony with practice under a flexible constitution. At the time of which we are speaking the absolute supremacy of the Lords and Commons even in the realm was not fully acknowledged. And after the Revolution of 1689 this principle had to be accepted as a consequence of stubborn events rather than as the result of formal enactment. So the embryonic constitution of the empire was left to its natural course of development, and it remained still to be seen whether the dominions and the realm would tend slowly to coalesce under a common system of representation and executive control, or whether they would remain distinct. The final trend was decidedly toward the latter alternative.

Recurring to the subject of executive control, it should be said that for about two decades at the middle of the seventeenth century the British navy was quite active in the West Indies. In 1654 a small force, intended to be recruited chiefly in the colonies, was sent out against the Dutch and in the end attacked Acadia. In 1664 another small force, wholly of British origin, accomplished the reduction of New Netherland. A larger body of troops was sent to Virginia after Bacon's rebellion, but it was not needed and proved an embarrassment to the commissioners whom it accompanied. Save the presence of a guardship here and there and of a small garrison at New York and the one which accompanied Andros to Boston, this was all that the continental colonies saw of British armed forces during the century. It is true that they indirectly felt the effect of the achievements of British arms in the West Indies and in Europe. They shared with other subjects in the protection which resulted from these victories. But, with the exception of the conquest of New Netherland, the advantage did not, as yet, come very close home to them. Both the fact and its consequences were

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remote, and the colonists could not be expected to realize them very clearly. The wars which immediately concerned them were with the Indians, and the shock of these they were forced to sustain without external aid. CONCLUSION.

Occasionally also during the century treaties were made by Great Britain which affected the colonies. But these related chiefly to claims of the French on the north and of the Spanish on the south, and became far more real to the colonists in the eighteenth century than they were at the time of which we are now speaking. The treaty of Madrid in 1670, by which Spain recognized the right of England to her North American possessions, signified the abandonment of claims which had never been other than shadowy. The only treaties of the century which closely affected the fortunes of the continental colonies were those of Breda and Westminster, by which New Netherland was transferred into the possession of the English.

Operations of the army and navy, as well as the conclusion of treaties, under the English system were chiefly the result of executive action. In addition to this, boundary disputes were adjusted before the privy council and occasionally suits involving traders or colonists were heard before the high court of admiralty. As has been proven in detail, the only continuous relations which the colonies had with the British government were with its executive. Administrative control by the British crown was the only function of government the influence of which was permanently felt by the colonies. The effectiveness of this control was seriously lessened both by difficulty of communication with America and by the fact that fully equipped governments were developed in the chartered colonies, as a result of which they confronted the home government almost as closed wholes. Even continuous administrative relations were possible only with royal provinces, and of these Virginia was the only example which existed on the continent during any large part of the century. But about 1660 began the period of commercial wars, and greater importance attaches to the next three decades than to any later period until the colonial revolt. Rivalry with the Dutch and

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Spanish during the Protectorate laid the foundation for this change. The struggle with the Dutch was continued and intensified after the Restoration. This called forth the acts of trade and resulted in the occupation of New Netherland by the English. Now that the acts of trade were being passed and the interests of commerce were outranking all others, the necessity of enforcing obedience to these acts in the colonies became increasingly evident. It added new strength to the appeals of Mason and Gorges and to the dislike which the Anglicans naturally felt toward the Puritan colonies and toward Massachusetts in particular. Considerations which had appealed to Laud and his contemporaries were given new strength, now that they were merged with the prevailing commercial ambition of the time. Overweening independence must now be curbed, not alone in the interest of the established worship, nor in order that injured subjects might obtain their rights, nor even in order that sovereignty might be vindicated; but that the trade regulations prescribed by parliament and favored by the merchants should be obeyed. The principle of the navigation act and of the staple must be enforced. Trade with the Dutch and with other foreigners, except under conditions which, it was believed, would secure British supremacy, must cease. Royal officials must be appointed in all colonies and more regular and systematic administration enforced. This was the spirit of the old colonial system.

Precedents for action in such emergencies were not lacking. In earlier times royal commissions, with extensive powers, had been appointed. One colonizing company had been dissolved and an attempt had been made to dissolve another. A third had surrendered its charter. A plan to make New England a royal province had been cherished of old. A preference for a monarchical organization of the colonies had been expressed. But these projects had proved to be tentative and at the time had failed of their intended results. Now, whether consciously or not, a line of policy that much in the conduct of the early Stuarts had seemed to indicate as their preference was revived. Earlier precedents, so far as they

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tended toward vigorous control, were brought into service and on a much larger scale than before. CONCLUSION.

To this end committees and commissioners of plantations were appointed in England. Royal letters and commissions were despatched to the colonies. Agents were summoned from the colonies to England. Calls were issued for full reports from the governors. At intervals an active correspondence was carried on with officials in America. Hearings repeatedly occurred in England. A special agent was sent to Massachusetts to announce the king's will and make inquiry on the spot. A beginning was then made in the appointment of customs officers to reside in the colonies. But these measures met with only a partial success. They failed to secure the full obedience which was desired. The courts and juries and officials of the chartered colonies must still be relied on to enforce the will of the imperial government, and in matters of chief moment they were found wanting. The chartered colonies themselves were the great obstacles in the path, and the charters must be removed out of the way before the ideal of the imperialists could be attained. This was practically the unanimous opinion of the officials and agents who were immediately concerned with the business.

The assault was made first and chiefly on the Massachusetts charter. Its recall was accompanied by the establishment of royal government in New Hampshire. The accession of James II to the throne made New York a royal province and terminated the brief existence of its assembly. The fall of the Massachusetts charter was followed by the suspension of government under the charters of Connecticut and Rhode Island. Plymouth lost its separate existence. The dominion of New England was at once erected, and to it New York and New Jersey were added. All this was accomplished by a combination of executive and judicial action. It swept away assemblies and boundary lines, and aimed to undo the results of a half century of historic growth. It was followed, though a few years later and under different auspices, by the suspension of the governmental powers of William Penn and the Calverts. Mary-

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land was organized as a royal province, and the royal governor of New York was temporarily appointed governor of Pennsylvania. These, with other changes which came during the last decade of the century, show that the colonies were then in the midst of a notable transition. It originated in the councils of the English king and was carried into execution by the initiative of the crown. As to the steps of the process parliament was not consulted and showed no desire to interfere. It was the culmination of plans which had long been advocated by officials, and which had for years been maturing in the councils of the home government. In the process of executing the plan prerogative government over the colonies reached its high-water mark. Never again was so much attempted or accomplished by this method. When, in later times, imperial pressure was again brought to bear, parliament was resorted to at every step. The policy of the Stuarts was to ignore parliament or push it one side, and by the use of an unlimited discretion to accomplish their purposes alone.

The object of these administrative measures was to reverse the policy which had resulted in the establishment of the chartered colonies; to recover, so far as possible, the powers which the crown had granted away. It aimed to break down the exclusiveness of those jurisdictions and force an entrance for the officials of the crown. As the result of the multiplication of colonies, the growth of commercial interests, the rising importance of questions of defence, the home government now had a policy which it must administer. This policy ran counter to many local tendencies within the colonies themselves. It was imperial rather than particularistic, and it aimed, whether by wise or unwise methods, to advance British interests as a whole. These it sought, it is true, with primary reference to the interests of the realm; and yet not without regard to those of the colonies, provided they submitted to the conditions and kept the place which British authorities now saw fit to prescribe. For the prosecution of this policy it could not rely on the appointees of the proprietors or on the elected officials of the corporate colonies. It must work through royal appointees,

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must restore the immediate relation between the colonists and these appointees. That, as we have now seen, was the meaning of the establishment of a royal province in the place of a chartered colony. The ideal of the statesmen of the later Stuart period was everywhere the royal province, the executive and judiciary of which should act directly or wholly under the authority of the king, as did the corresponding bodies in England. They should hold office at the pleasure of the crown and be guided by its instructions. The official list of the colonies would thus become a royal official list, and a body of magistrates would be everywhere available for the enforcement of the royal will. In trade, finance, war, justice, religion, through the circle of governmental action, imperial interests would thus be upheld and made effective. The Stuarts would go farther than this. They would permanently abolish assemblies, or make them the willing tools of the executive, and consolidate the colonies on a large scale. Something approaching the French system of administration should result. This was their ultimate goal, as revealed by the events of the years immediately following 1680.

CONCLUSION.

But the policy of James II, in its final stage, was in violent opposition to colonial and English traditions. Whether or not it could have been permanently maintained we cannot say. The Revolution in England solved that question in a way that was most welcome to the mass of the colonists. As was observed at a later time, when James was making such inroads on the liberties of the colonists he was also violating the liberties of his subjects in the realm. They had resort to parliament for redress. With that event passed the only period in the history of the colonies when it was possible to suppress assemblies and make the executive strong enough to sustain the entire burden of government. After the fall of James and the uprisings which were consequent upon it, colonial boundaries and assemblies were restored, but not the chartered colony as the sole or chief form of colonial government. A compromise was reached between this and the governor-generalships of James II. It was the system of royal provinces, each with its assembly of two houses, its officials and judges, the appointees of the

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crown, and all acting in well defined subordination to the British government. This was the balanced system which was developed in harmony with the spirit of the English Revolution. The chartered colonies embodied better the radicalism and the ill defined strivings of the Puritan Revolution. The royal province exhibited better the spirit of 1689 and of the long period of Whig supremacy which was to follow. The transition to the system of royal provinces was not completed at once. It was a gradual process. The present volume carries us only through its initial and more tumultuous stages. The middle of the eighteenth century had been reached before the last colony which had been founded under a charter passed from its original form to that of the royal province. But by 1692 it had become evident what the result was likely to be, and that the attainment of the result was only a question of time.

In the royal provinces we have a better adjusted balance of forces than in either the chartered colonies or the governor-generalship. Relations there were analogous to those within the kingdom of England itself. The interests of the crown were maintained by means of appointments and the exercise of patronage, by correspondence and instructions, by direct dealings with assemblies and the initiation or veto of legislation. The interests of the people were safeguarded by an elected assembly which was intrusted with control over the purse; by jury trial and the forms of English judicial procedure. The king, so to speak, was brought into the province. Business was done in his name, under his instructions, and proper reference thereof was made to England. The province was more closely linked to England than was the chartered colony, and felt more directly the routine of its administration. By means of that routine greater regularity and uniformity in the processes of government were attained than could have been possible under a system of chartered colonies. In the case of the royal provinces the questions involved in imperial administration were to a large extent fought out within the provinces themselves as the result of continued action and reaction between the royal appointees and the colonists as represented in the

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assemblies. The relation was analogous to that between crown and parliament, whereas in the external contact between the crown and the chartered colony the analogy fails. At the same time it is true that the royal provinces, like the chartered colonies, were remote from England, and the impressions produced on the crown by their struggles and complaints were weaker than they would have been had they originated in England. Conversely, the royal commands lost not a little of their force and effectiveness in their passage across the Atlantic. Natural obstacles to government remained, though institutional barriers had to an extent been removed. And yet, when we view the colonial period as a whole, it becomes apparent that the distinction of prime importance in the classification of the colonies is that between chartered colonies and royal provinces. The period itself is divided at that point of time when the one form yields leading place to the other. A distinct step forward was then taken in the constitution of the British empire.

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